UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/24/Add.7
13 November 2000

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

COSTA RICA

[10 August 2000]

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* The annexes are available for consultation in the secretariat.

1. Costa Rica, as a State Party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, presents for the consideration of the Committee Against Torture its initial report on measures taken to give effect to the undertakings arising from the Convention, as required by its article 19.

2. Human rights in general, including the right to physical and moral integrity and the right not to be tortured, are secured for all the country's inhabitants, whether citizens or aliens, men or women, in a broad constitutional and legal framework.

Article 1

The body of law prohibiting torture in Costa Rica

The constitution

3. Article 40 of the Constitution, promulgated on 7 November 1949, states: "No one may be subjected to cruel or degrading treatment, or to life imprisonment, or to the penalty of confiscation. Any statement obtained by means of force is null and void." [1]

4. The Constitution is a juridical norm with a defining function. It is coercive in the sense that it can be imposed, even by force, in preference to all other rules of law, since it is the "highest law" to which all other laws must defer and adapt. In turn, the most important function of the Constitution, in both a quantitative and a qualitative sense, is to provide an immediate safeguard for the fundamental rights of individuals.

Universal instruments

5. At the level of universal instruments, Costa Rica has signed the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations in resolution 217 A (III) of 10 December 1948.

6. Other international instruments signed and ratified by Costa Rica under Law No. 4229 are the international human rights covenants adopted by the United Nations General Assembly in resolution 2200 of 16 December 1966: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which were approved on 11 December 1968 and published in the official gazette La Gaceta, No. 288 of 17 December 1968. In addition, under Law No. 7041, approved on 8 July 1986 and published in the official gazette La Gaceta No. 230 of 1 December 1978, Parliament adopted into law the International Convention on the Suppression and Punishment of the Crime of Apartheid.

7. Costa Rica has also ratified the following instruments for the protection of human dignity: Law No. 1205, ratifying the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 4 December 1950, published in the Official Journal La Gaceta No. 226 of 7 October 1950; Law No. 3844 approving the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 5 January 1967, published in the official gazette

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[1] CORDOBA ORTEGA, Jorge, and others. Constitución Política de la República de Costa Rica - Anotada y Concordada con resoluciones de la Sala Constitutional, Prodel. San José, first edition, 1996.

La Gaceta No. 5 of 7 January 1967; Law No. 6968 approving the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations on 18 December 1979, approved on 2 October 1984 and published in the official gazette La Gaceta No. 8 of 11 January 1985; and Law No. 7184, ratifying the Convention on the Rights of the Child, approved on 12 July 1990 and published in the official gazette La Gaceta No. 149 of 9 August 1990.

8. Furthermore, under Law No. 7351 of 11 November 1993, Costa Rica ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985. The amendment to articles 17 and 18 is pending before the Legislative Assembly.

Regional instruments

9. At the level of regional instruments, Costa Rica signed the American Convention on Human Rights, known as the "Pact of San José of Costa Rica", on the day when it was opened for signature, on 22 November 1969. It was approved by the Legislative Assembly of the Republic under Law No. 4534 on 23 February 1970, published in the official gazette La Gaceta No. 62 on 14 March 1970, and ratified on 8 April 1970. The instrument of ratification was deposited on 8 April 1970.

10. In addition, Decree No. 7060-RE, published in the official gazette La Gaceta No. 114 on 16 June 1977, contained a declaration of the unconditional acceptance by Costa Rica, for the entire time in which the American Convention on Human Rights remains in force, the jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. This declaration was presented to the Secretariat of the Organization of American States on 2 July 1980.

11. Under Law No. 7573 of 1 February 1996, published in the official gazette La Gaceta No. 36 on 20 February of the same year, Costa Rica ratified the Inter-American Convention on Forced Disappearance of Persons, opened for signature in the city of Belém do Pará, Brazil, on 9 June 1994. This international document calls upon States Parties to refrain from practising, tolerating or permitting the forced disappearance of individuals, even in states of emergency, or the waiver or suspension of individual liberties, any such act being regarded as an imprescriptible international crime warranting extradition by any of the signatory States to the Convention.

12. The Protocol to the Inter-American Convention on Human Rights, on the abolition of the death penalty, was endorsed under Law No. 7747, adopted on 25 February 1998 and published in the official gazette La Gaceta No. 53 on 17 March of the same year.

13. In addition, Costa Rica signed the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, ("Convention of Belém do Pará") on 9 June 1994, during the VII Plenary Meeting of the Assembly of American States. This treaty was incorporated as Law No. 7499, approved by the Legislative Assembly on 18 April 1995 and published in the official gazette La Gaceta No. 123 on 28 June 1995.

14. Finally, Costa Rica has ratified the "Inter-American Convention to Prevent and Punish Torture", adopted in Cartagena de Indias, Colombia, on 9 December 1985 and in force since 28 February 1987. The Convention was signed by Costa Rica on 31 July 1986 and ratified by the Legislative Assembly through Law No. 7934, published in the official gazette La Gaceta No. 219 on 11 November 1999.

The Criminal Code

15. The existing Criminal Code of Costa Rica does not define torture as such. However, a draft law was published in the official gazette La Gaceta No. 234 of 2 December 1999, to insert an article 123 bis into the Criminal Code, which was enacted by Law No. 4573 of 4 May 1970. This draft, which has been studied and reported on by the Standing Committee on Legal Affairs of the Legislative Assembly, will incorporate the crime of torture into the text of the Code, on the basis that other crimes such as homicide, causing grievous bodily harm and the sequestration of prisoners, which could involve the practice of torture, are specifically prohibited in the Code, whereas there is no definition of torture itself.

16. The text of the draft in question reads: "Single article. To add an article 123bis to the Criminal Code of Costa Rica, Law No. 4573 of 4 May 1970, to read as follows: Article 123 bis. The act of inflicting on a person pain or physical or mental suffering, or intimidating or coercing a person by reason of an act which he or she has committed or is suspected of committing, or in order to obtain from him or her or from a third person information or a confession, or on grounds of race, nationality, sex, age, political, religious or sexual preferences, social position, economic situation or civil status, shall be punished by imprisonment of three to ten years.

17. If the foregoing acts are committed by a public official, the penalty shall be five to twelve years imprisonment and suspension from office for two to eight years".

18. In essence, this new enactment will broaden the scope of the crime of torture in Costa Rica in line with international treaties, since it covers both public officials and private individuals guilty of the offence..

19. This legislative initiative underscores the commitment of the State of Costa Rica to maintain full respect for human rights and to ensure that its citizens will enjoy such protection, and to provide the legal instruments necessary to render that right effective whenever it is breached.

20. By eradicating torture as a method of punishment, or as a means of obtaining information or a confession, or as a method of intimidation or discrimination or other offence against the integrity of the human person, the judicial authorities will have a powerful tool at their disposal to prevent both Government authorities and individuals from engaging in "this dehumanizing and vile practice". [2]

The order of precedence of international human rights instruments

21. Article 7 of the Constitution defines the order of precedence of the international treaties which have been duly ratified by the Legislative Assembly. According to article 7: "Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the acts from their promulgation or from the day that they designate. Public treaties and international agreements referring to the territorial integrity or the political organization of the country shall require approval of the Legislative Assembly by a vote of not less than three-fourths of its total membership and the approval of two-thirds

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[2] CONTRERAS (Rina); PICADO SOTELA (Sonia), Proyecto de Ley "Adición de un artículo 123 bis al Código Penal de Costa Rica, Ley No. 4573 del 4 de mayo de 1970, Expediente No. 13.792.

of the Members of a Constituent Assembly called for the purpose". (as amended by Law No. 4123 of 31 May 1968).[3]

22. "… in the event of a conflict between a treaty and a law, the question of which is anterior and which is posterior is irrelevant, for the treaty will always prevail by virtue of its "authority superior to laws"". It is clear that it will be easier to find the solution to the problem when the treaty is subsequent to the law, on the basis of the principle enshrined in article 129, paragraph 5, of the Constitution, whereby the later statute waives the earlier one. However, in fact the solution will be the same even when an ordinary law is subsequent to the treaty which it contradicts, since the latter takes precedence over the former by virtue of its superior authority, and this is borne out by the recent amendment to article 2 of the Civil Code (referred to above), in the sense that "provisions conflicting with another higher-ranking provision shall be null and void". (Resolution of the Supreme Court, special session of 22 May 1986).

Constitutional Chamber

23. For many years, the duty of safeguarding the constitution of Costa Rica fell upon the Supreme Court of Justice, as the highest court in the land. The adoption of Law No. 7128 of 15 June 1989, entitled "Law on constitutional jurisdiction" ushered in a thoroughgoing reform of the constitutional law of Costa Rica , by establishing a new specialist chamber and a new approach to interpretation, referring to values, principles and axiological meanings beyond the letter of the written text.

24. On the question of jurisdiction, article 2 of this Law states that the Chamber may apply not only the rights enshrined in the Constitution itself, but also "those recognized by the international law in force in Costa Rica".

25. The new Law, by introducing constitutional jurisdiction into Costa Rica, modified the system of constitutional justice which had been in force until that time, and effected the greatest change in the country's legal system for the past 20 years, a change which its lawyers have called "a genuine revolution in the legal world". [4]

26. Costa Rican case law has defined the scope of article 40 of the Constitution, for the purpose of establishing the Constitutional Chamber in its decision 6685-94, to mean that "nobody may be imprisoned for life and by analogy, nor may indefinite penalties of any other kind be imposed."

27. By means of this criterion, the Chamber confirmed that all punishments of an "ad perpetuam" nature were unconstitutional. A few examples will suffice of this trend in the case law.

a) By its decision 4425-94, the Chamber resolved that: "the impossibility of cancelling an order for the removal from office of a court official means in turn that the penalty can apply for an indefinite period whenever a decision falls to be made on the rehabilitation of the former official, and this is unconstitutional, since it is a penalty unlimited in time which violates the prohibition enshrined in article 40 of the Constitution."

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[3] See Constitución Politica, op. cit. Page 23.

[4] RIVERA SIBAJA, Gustavo, Ley de Jurisdicción Constitucional y creación de ka Sala Constitucional, Editec Editores, Colección Leyes 29, San José, Costa Rica, 1997, page. 5

b) In the same light, decision 4100-94 of the Chamber stated in its preambular part that "in all these rules there is clear provision for a permanent removal from office of a notary, in the form of the definitive cancellation of the licence to practise as a notary. It is obvious that these provisions infringe the prohibition against penalties unlimited in time which is found in article 40 of the Constitution".

28. Today, Costa Rica still adheres to its undertaking to pursue the implementation and gradual improvement of the constitutional guarantees of protection for fundamental rights.

Rules governing the prison system in Costa Rica

29. The prison system in Costa Rica is governed by Law No. 4762 of 8 May 1971, establishing the General Directorate of Social Rehabilitation. Since it came into effect, there have been significant changes, along with new legal and other instruments to regulate institutional practice and the operation of the prison system. These instruments are the following:

a) Law No. 4762 of 8 May 1971 created the Board for construction, installation and property purchase, the purpose of which is to support the work of the General Directorate of Social Rehabilitation through investment, licensing and the administration of funds for the agricultural and industrial activities of the national prison system;

b) the Regulation on the Rights and Duties of Prisoners, laid down in Executive Decree No. 22.139-J, published in the official gazette La Gaceta No. 103 of 31 May 1993.

c) the Organic and Operational Regulation of the Directorate of Social Rehabilitation, promulgated through Executive Decree No. 22.198-J, published in the official gazette La Gaceta No. 104 of 1 June 1993.

d) the promulgation of Law No. 7410, published on 30 May 1994, entitled "Law on the Police", which includes prison officers, thus ensuring stability of employment and proper training for these officers,

e) the Regulation on Visits to Prisons in the Costa Rica Prison System. Executive Decree No. 25.881-J, published in the official gazette La Gaceta on 31 March 1997. This regulation governs the entry of visitors to the prisons in the country, with a view to preserving order, discipline and security in the institution. The main aim of visits is to help maintain and strengthen the ties between the prisoner and his or her family and community.

f) the Regulation on the confiscation of drugs and the control of medicaments in the Costa Rica prison system. Executive Decree No. 25.883, published in the official gazette La Gaceta of 31 March 1997. This regulation governs the entry of medicaments and the handling of substances which may have a negative impact on the health of persons in custody, including drugs, narcotics, psychotropic or psychopharmaceutical substances, inhalable substances, precursors and derivatives of alcohol.

g) Instruction for the regulation of organizations of prisoners and their relationship with the prison administration. This instruction was published in the official gazette La Gaceta on 9 May 1997. It regulates the various organizations without legal personality in the prisons in the national system, and the relationship between the prison administration and all prisoner organizations.

h) the Regulation on personal searches and inspection of property in the Costa Rica prison system. Executive Decree No. 25.882-J, published on 21 March 1997. This regulation governs the procedures for personal searches and inspections of property which apply to visitors, prisoners and prison staff, both under and above the age of majority, and to the various items of property which are brought into prison premises and which remain there or are taken out..

30. Additionally, as regards international agreements, Costa Rica has adopted the recommendations laid down in the United Nations Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". The great majority of the general principles laid down in these international rules are reflected in the regulations which govern the Costa Rican prison system.

31. The United Nations Standard Minimum Rules for the Treatment of Prisoners [5] lay down rules for State and prison authorities on how they should behave and how they should handle prisoners who refuse to follow the recommendations of the security staff, and how public officials should deal with prisoners. This body of rules ensures that prisoners are not subjected to serious interference with their personal integrity and their health. One aspect of this set of rules which is worth emphasizing is article 3 of the Code of Conduct, which refers to the proportionality of the punishment, i.e., the prohibition of the use of force by public officials responsible for the care and custody of prisoners, except in cases where it is strictly necessary and to the extent required for the performance of their duty.

32. One noteworthy element of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment is Principle 30, which requires punishments in prisons to be specified by law or lawful regulations. In this context, the Regulation on the Rights and Duties of Prisoners clearly defines the kinds of misconduct and the sanctions which may apply to prisoners, and the procedure to be followed in each case.

33. These instruments represent direct sources of protection which guarantee restoration of the rights infringed where a violation is found to have occurred. If the situation is not regularized, recourse may always be had to outside bodies to compel the administration to law correctly.

Rules governing the operation of the Judicial Investigation Department (O.I.J).

34. In the administrative sphere, a number of guidelines have been laid down within the Judicial Investigation Department - the technical judicial police - on the treatment to be given to prisoners, and appropriate checks have been introduced to prevent abuses of authority.

35. The O.I.J. has a "Manual of Criminal Investigation Procedures", containing two sections with rules on the arrest of suspects and the treatment of detainees. Annexed to this Manual is the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979.

Article 2

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[5] See annexed documents.

The system of division of powers

36. Costa Rica has adopted the strict principle of the separation of powers, establishing the principle of checks and balances. In practice, the executive, the legislature and the judiciary share the exercise of these powers, within the spheres of competence assigned to them by the Constitution. These powers are not dispersed in isolation from one another; they balance one another out.

37. As regards checks and balances, this means that the stronger a power is, the stronger the others become, in so far as each of them is controlled by, and controls, the others. In the exercise of its functions, each power has to ensure that it operates according to the "correct allocation"; thus the division of powers avoids an excess or distortion of power in the sphere proper to each one. On the contrary, this interplay of powers guarantees complete respect for the constitutional and legal framework.

38. As the Costa Rican jurist Carlos José Gutiérrez has pointed out, "democracy is the only satisfactory compromise between freedom and the law which men have been able to devise … Freedom is the right of each to decide and law as he decides he wants; law, on the other hand, implies the possibility that a man may be compelled to do something he does not want to do, that he may be given orders and, with the threat or reality of sanctions, be obliged to carry them out.." [6]

39. The recognition of the Constitution as the highest norm in the legal order means that it regulates the main public bodies and private subjects which coexist with it.

Judicial remedies

40. The Universal Declaration of Human Rights states in article 8, on the question of remedies, that: "Everyone has the right to an effective remedy by the competent national tribunals for laws violating the fundamental rights granted to him by the constitution or by law".

41. The Inter-American Convention on Human Rights, also known as the Pact of San José of Costa Rica, likewise provides in its article 7, paragraph 6, that "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished."

42. The International Covenant on Civil and Political Rights, article 9, paragraph 4, provides that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

43. Article 48 of the Constitution offers all subjects means of protection by establishing the remedies of amparo and habeas corpus, which deliver adequate safeguards of fundamental rights. States have an obligation to provide an effective remedy against any infringement of

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[6] GUTIERREZ (Carlos José) and others, Derecho Constitucional Costarricense, Editorial Juricentro, 1983, page 38.

internationally recognized human rights. These remedies will be discussed in greater detail below.

44. After the right to life, personal freedom is the most valuable thing for human beings; without it, the other rights are lost or impaired as far as the chance of exercising them is concerned.

45. As the Costa Rican constitutional lawyer Rubén Hernández says, "legal freedom is inseparable from the human being because his life involves the constant use and development of a vast stream of potential energy and of many different creative possibilities which cannot be confined to any pre-established channel, for a human being is the architect of his own destiny... freedom, accordingly, is the essence of the human being."

Institutions for the protection of prisoners' rights

46. For persons deprived of their liberty, Costa Rican law prescribes a range of institutions to ensure that their rights are safeguarded. The external institutions are the Constitutional Chamber, through the remedies of amparo and habeas corpus; the Office of the Ombudsman, the Criminal Courts Review, the Inter-American Commission on Human Rights, the Committee on Human Rights and the other organs of the United Nations.

47. The role of the Constitutional Chamber, established 10 years ago, is fundamental to what may be called the constitutional control over the execution of penalties. It is important to note that for the purpose of monitoring respect for the Constitution the Tribunal has introduced a novel procedure for enforcing a judgement which is very useful in the matter of applying international instruments, namely setting a time limit for compliance and requesting the institution to submit a report on the measures adopted.

48. In this connection, decision No.1032-96 of the Constitutional Chamber stated: "In accordance with article 48 of the Law on Constitutional Jurisdiction, the Executive fixes a time limit of one year, reckoned from the date of notification of this award, to bring the San José Centre into compliance with the "Minimum Rules for the Treatment of Prisoners", adopted by the United Nations. The Ministry of Justice and Pardons must inform this Chamber, every six months, of the measures adopted for this purpose."

49. For its part, the Office of the Ombudsman has a division known as "special protection" dealing with complaints and queries from detainees and their relatives and friends, and also from individuals and non-governmental organizations involved with the human rights of this section of the population.

50. This special department of the Ombudsman's office may institute investigations on its own initiative into situations which come to its notice and which are suspected of violating the human rights of prisoners. Its functions include i) ensuring compliance with the decisions of the Constitutional Chamber; ii) monitoring compliance with decisions referring to situations which violate the rights of prisoners; iii) holding meetings with prison staff and prisoners; iv) following up draft laws and regulations on the subject and v) making on-the-spot-visits, with or without prior notice, to gather information about conditions in the prison in general (hygiene, ventilation, furniture, sanitary facilities, food, medical care, education, recreation and sport, work, communications with the outside world, visits, the disciplinary regime and the treatment of all their fundamental human rights.

51. For its part, the Women's Legal Defence unit in the Office of the Ombudsman handles and investigates, from a gender perspective, alleged violations of the human rights of women prisoners.

52. Within the internal sphere of the Ministry of Justice, prisoners can have recourse to the office of the Comptroller of Services, set up by Decree No. 26965-J, published in the official gazette La Gaceta No. 98 of 22 May 1998, or to the Legal Division of the Ministry, through the Department of Administrative Procedures. This department is responsible for making the appropriate enquiries and ordering the appropriate sanctions in cases of alleged maltreatment or abuse of a prisoner by judicial officers.

53. Taken together, these institutions meet the needs of a modern democracy, in which new kinds of procedures have to be established and encouraged in order to change the spirit and methods which should govern the relationship between the administration and the users, without diminishing in any way the control exercised by the courts over the administration.

Historical background to the abolition of the death penalty in Costa Rica

54. In 1878 the then President of the Republic, General Tomás Guardia, a career soldier, abolished the death penalty, and on 26 April 1882 placed on a constitutional footing the provision which upheld the inviolability of human life. Today, this rule is enshrined in the Constitution of the Republic of Costa Rica, promulgated on 7 November 1949, which states in article 21, "Human life is inviolable".

The law on torture in Costa Rica

55. As stated in article 1, the Criminal Code of Costa Rica does not contain any definition of the crime of torture, and the Congress of the Republic is now contemplating an amendment to the Code in order to incorporate such a definition into the domestic legal order. However, the crime does not go unpunished. The law provides sanctions, not only in line with the Constitution, but also under international treaties which have been duly approved by the Legislative Assembly, such as the present Convention against Torture and the Convention on the Rights of the Child, article 37 a) of which requires States to ensure that: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

Rules for public officials on obedience to orders

56. The law of Costa Rica governs the conduct of its officials when exercising a public function, and lays down a series of regulations to ensure effective compliance with its requirements.

57. Costa Rica has also incorporated, as part of its domestic legal order, the "Code of Conduct for Law Enforcement Officials", adopted by the General Assembly of the United Nations through resolution 34/169 on 17 December 1979. Article 5 of the Code states that "No law enforcement official may inflict, instigate or tolerate any law of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances".

58. For its part, article 71 of the Law on Constitutional Jurisdiction states that "a sentence of three months to two years imprisonment, or twenty to sixty days fine, will be imposed on any

person who fails to fulfil or cause to be fulfilled an order made in proceedings for amparo or habeas corpus, unless the offence carries a more severe penalty."

59. Article 72 goes on to state that "A term of imprisonment of six months to three years, or sixty to one hundred and twenty days fine, will be imposed on any person who causes a fresh application for amparo or habeas corpus for the purpose of recovering damages for the same persons for laws, omissions or threats which gave rise to a previous successful application for amparo."

60. In Chapter XV, entitled "Offences against the duties of public office", the Criminal Code defines the offence of abuse of authority. Article 329 states: "A public official who abuses his position to order or commit any arbitrary law such as to impugn the rights of any person, will be punished by imprisonment of three months to two years."

61. The above provision shows that the domestic law draws no distinction between torture and cruel and inhuman, or degrading treatment, but merely lays down penalties for public officials who commit the generic offence of "arbitrary laws". In this sense, Costa Rican law is in line with General Comment No. 20 on article 7 of the International Covenant on Civil and Political Rights, approved by the Committee on Human Rights in 1992, and with article 16 of the Convention against Torture.

62. Article 189 of the Criminal Code, in section 1, does however cover offences against individual liberty, and especially kidnapping. It states: "Article 189: Anyone who reduces a person to servitude or a similar condition or maintains a person in such a condition will be punished by imprisonment of four to twelve years."

63. Article 190 of the Criminal Code governs the offence of concealment of prisoners by the authorities, and reads as follows: "Article 190: Authorities which order and agents who carry out the concealment of a prisoner, who refuse to bring a prisoner before the appropriate Tribunal or frustrate in any other way the guarantee afforded by article 37 of the Constitution, shall be subject to the same penalty, in addition to the loss of their employment, office or function or disbarment from obtaining same for six months to two years."

Rules concerning amendments to the Constitution

64. In article 121, paragraph 7, On the functions of the Legislative Assembly, the Constitution provides for the possibility of "suspending by a vote of at least two thirds of all its members, in the event of obvious public necessity, the individual rights and guarantees enshrined in articles 22 (freedom of movement), 23 (inviolability of the home), 24 (inviolability of documents), 26 (right of reunion), 28 (freedom of opinion), 29 (freedom of expression), 30 (right of access to Government departments) and 37 (the right not to be detained without prior proof of an offence and the order of a court in accordance with the Constitution). The suspension may affect all or some of the rights and guarantees, all or part of the territory, and may last for up to thirty days. During this period, the Executive may only order the detention of individuals in establishments not intended for ordinary convicts, or may require them to be confined in places of habitation. It must also render an account to the Assembly, at its next meeting, of the steps taken to safeguard public order or to maintain the security of the State. Suspension of individual rights and guarantees not specified in this paragraph is not permitted in any circumstances."

65. The power to suspend constitutional guarantees on an exceptional basis is conferred on the Executive by article 140 (4) of the Constitution, which states that "During adjournment of

the Legislative Assembly, to order the suspension of rights and guarantees referred to in section 7 of Article 121, in the same instances and with the same limitations as are established therein, and to report immediately to the Assembly. A decree of suspension of guarantees is equivalent, ipso facto, to a convocation of the Assembly, which must meet within the next forty-eight hours. If the Assembly does not confirm the measure by a two-thirds vote of its entire membership, the guarantees shall be considered as reestablished. If the Assembly is unable to meet due to lack of a quorum, it shall do so the following day with any number of deputies. In this event, the decree of the executive power requires approval by a vote of not less than two-thirds of those present."

66. It should be pointed out that for the whole of the democratic period governed by the Constitution of 1949, Costa Rica has not found it necessary to resort to the suspension of guarantees contemplated in the Constitution.. The rule of law has always remained in force in theCosta Rican legal order.

Evictions and land ownership

67. As regards evictions and land ownership, there are difficulties in some parts of the country where territorial delimitation and land occupations are causing some conflict.

68. The most striking example is the Pavones region, in the south of the country, where a Costa Rican citizen and a United States citizen were killed in 1997. The case was resolved recently, and the Costa Rican involved in the death of the United States citizen was acquitted, the courts in Costa Rica having decided that it was a case of self-defence.

69. On 19 May 1998 the police evicted 278 families from a property in Cartago province. On 4 September, the police evicted 300 families who had a revocable lease on land in Quepos, Puntarenas. Both evictions were peaceful and within the law.

70. The report on the human rights situation in Costa Rica in 1999, prepared by the United States Embassy, refers to the problems involved in the occupation of uncultivated land. It states that President Rodríguez is anxious to reduce these conflicts by stepping up public security and regulating land tenure, and that the Legislative Assembly is reviewing the law on land ownership. This report mentions two significant evictions in 1999, on 25 May and 30 June, when the police evicted 350 and 300 families respectively in San José, in both cases peacefully and within the law.

71. A difficult eviction case in recent months was the one which took place on 1 July 1999, when about 300 families were evicted from the site known as La Carpio Dos, in San Sebastián, in the urban area to the south of the capital. The eviction was a lengthy legal procedure, since the Ministry of Public Security had to wait almost 23 months to carry out the court order.

72. The first application was made on 24 July 1997, and the order was made for the following 8 August. The affected parties entered a number of administrative appeals and plenary actions with the Hatillo court, but none was successful. They also made 250 amparo appeals to the Constitutional Chamber, all of which were dismissed. A fresh eviction order was made in April 1999, but was not carried out. Faced with this situation, the owners of the building submitted an amparo appeal to the Ministry of Public Security. It was upheld, giving rise to the eviction.

73. As a result of the Carpio Dos eviction, 15 Nicaraguan citizens were deported by the immigration authorities in accordance with the law, because they lacked regular immigration status. This situation prompted an amparo appeal to the Constitutional Chamber from the Legal Counsel of the Embassy of Nicaragua. The appeal was submitted on 15 July 1999, and was given the roll number 99-005168-0007. The appellants argued that their application for a residence certificate had been rejected while the Amnesty Law for migrants was in force, and they had not been granted the period allowed by the Law to appeal the administrative decision. It was argued that this in itself was a violation of the principle of legality and of due process, enshrined in articles 11 and 39 of the Constitution.

74. The Constitutional Chamber, in its decision No. 7741-99, granted the amparo appeal, stating in the preamble to its judgement that "the decisions in question were not properly reasoned and therefore infringed the right of defence and due process ..". Consequently, "the amparo appeal is upheld having regard to the principle of timely and complete adherence to the law, which applies also to the administration, since the General Directorate for Migration and Aliens is bound to deal with an application for temporary residence submitted by the appellants in the order required by the rules laid down by the competent authorities; the decisions whereby deportation was ordered are set aside, and accordingly, the appellants may enter and remain in the country at least until their application for residence has been heard, under the exceptional regime, and no renewed deportation order may be made, in compliance with the provisions of the law in this matter."

75. The last eviction took place on 17 February 2000 on a site in the municipality of San José, located in the community of Salitrillos de Sabanilla, in the canton of Montes de Oca. This group, evicted on two occasions by members of the municipal police, consisted of about 300 families. The eviction took place peacefully, as the families had been notified of the police action ahead of time by the authorities themselves. In the presence of the civil guard, the municipal police, officials of the Directorate for Migration and Aliens, the National Institute of Housing and Town Planning (INVU), and the Mixed Institute for Social Assistance (IMAS), the eviction took place in mid-February 2000. The evicted families were rehoused in a property to the south of the city of San José. [7]

76. The eviction of temporary residents is a regrettable affair from the viewpoint of human rights. However, Costa Rica is a State governed by law and must comply with the rules enshrined in article 45 of its Constitution, which upholds the right to private property. The fact of having no home is not an offence in itself; on the contrary, it translates into an undertaking on the part of the Government authorities to resolve the problem. However, the Costa Rican legal order does regulate a number of situations which may result in illegal actions defined in the Criminal Code.

77. The Government of Costa Rica is aware of the housing problems of many of its inhabitants, and estimates the housing shortage to date as 170,000 units [8]. This situation has deteriorated further in recent years with the entry of a large number of refugees and economic migrants from Central America, especially Nicaragua, escaping from the difficult economic situation in their country and seeking better prospects in Costa Rica.

78. However, the rule of law must prevail, being a key element of democracy. For this reason, the Government must at times law to prevent occupations of waste land which undermine public order and restrict the rights of the lawful owners of the land.

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[7] "Desalojadas 200 familias", La República, Friday 18 February 2000, ? page 8A.87

[8] Figure supplied by the Planning Department of the Ministry of Housing. San José, December 1999.

79. As an example of its policy, and because of the lack of available resources to deal with the migrant problem in Costa Rica, the Government is negotiating with the United States Agency for International Development (USAID) for assistance in resolving the social problems in the 21 cantons which have the largest numbers of migrants in Costa Rica.

80. Under the "Programme for improving the quality of life of immigrants in Costa Rica and facilitating their integration", it has proposed to the Government of the United States that it contributes 21% of the total cost of the project, estimated at $90.2 million dollars. This project, to be implemented by the International Organization for Migration, will provide support for the four areas most affected by the increasing immigration from Central America: health, employment, housing and education.

81. The deportation of foreigners living in temporary housing takes place because such persons are acting outside the law. The Government has made it known through various channels that it will not permit any illegal foreigner, even if his immigration status is currently being processed, to take part in land occupations. The aim is to find an overall solution to the housing problems, without allowing the institutional order to be undermined.

82. In the same sense, judgement No. 106-94 of the Constitutional Court held that "Where foreigners reside on the national territory, there is a presumption that their conduct complies with the internal law. The American Declaration of the Rights and Duties of Man states, in article XXXIII, that "It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be." Good behaviour is a substantive requirement and principle for the lawful residence of foreigners on the national territory. Consequently, it is not unreasonable if, in the event of a change of circumstances such as occurs when the legal order is infringed, the right of residence enjoyed by a foreigner may be withdrawn by the competent authority."

83. What is important in such instances, as the press and representatives of local human rights organizations have pointed out, is to recognize that the actions of the police were peaceful. In this sense, the press noted that "what happened was within the law and fully respected the rights of the occupiers. There are no recorded instances of abuse by the officials who carried out the eviction order, in spite of the resistance put up by the temporary residents." [9]

84. In its 1999 report on the human rights situation in Costa Rica, the United States Department of State reiterated the point made in its previous reports, that the authorities law within the law, and there are no allegations of abuse against the officials who participated in the evictions. There are no known reports on the incident from other countries, and for this reason only the report from the United States is mentioned here, in the light of its demonstrated interest in land tenure situations.

85. The eviction procedures of the Ministry of Public Security are duly regulated. The first step is when the Ministry receives from the interested party an application accompanied by a land registry certificate or notary's certificate to the effect that he is the lawful owner or proprietor. Once these documents have been submitted, the Legal Department of the Ministry draws up an official decision which is signed by the Minister, informing the defendant that he must leave the premises within the fixed time limit of five working days, or show a better claim to them.

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[9] "Desalojaron la Carpio Dos - No hubo violencia". Diario La Nación., Accident and Crime Reports, Thursday 1 July 1999, page 8A.

86. If the defendant wishes to lodge a petition for the Ministry to reconsider its decision, the eviction is suspended until a fresh decision is made assessing all the evidence brought by both parties. In addition, the defendants may lodge an appeal for reconsideration or review, a complaint or an amparo application. The occupiers may also bring the decision to the courts. If the applicant is able to prove a better claim, the eviction order will be enforced.

87. In executing the order, the temporary occupants are given 72 hours to leave the premises voluntarily, and only if they fail to do so may force be used by the police, as permitted by law. Where evictions are carried out by members of the police force, officials from other Government agencies are asked to be present, including the Red Cross, the National Children's Council, the Office of the Ombudsman, the immigration police, the Ministry of Housing and the local State attorney's office.

88. The reports of Amnesty International for 1997 and 1998 record several cases of alleged excessive use of police force in rural evictions, especially the 1997 report, referring to the "18 April farm" in Sarapiquí, in the northern part of the country. It is alleged that 80 members of the Civil Guard and various private armed guards proceeded to evict about 200 peasants who had invaded the site. During the eviction, three peasants were injured by shooting or otherwise, and some claimed to have been beaten after being taken into detention.

89. According to a report submitted by the Ministry of Public Security, the company "18th April S.A." applied for the evacuation of the building, located in Achiote de Sarapiquí, on 23 January 1995. Following a number of judicial and administrative procedures, the eviction order was first executed on 7 May 1997. In spite of that, the occupiers again took possession on three subsequent occasions, and were evicted each time.

90. When the fourth eviction order was executed, on 30 May 1997, it was reported that two of the occupiers were hurt. The investigation carried out by the internal authorities of the Ministry of Public Security established that there was no responsibility on the part of any police officer for the injuries sustained.

91. The investigation established that on the day in question, the Costa Rican police did not have at its disposal any firearm which could have resulted in injury to one of the persons concerned.

92. As regards the second of the two persons, Mr VRTR brought a court action against Mr FGCC, believing him to be the police officer who had shot him in the leg. However, the finding of the criminal court of Sarapiquí, in the north of the country, held it to be proven that the accused had never been a police officer and was not the perpetrator of the alleged unlawful laws, and therefore ordered the case to be dismissed.

93. Situations of this kind tend to occur in isolation and are the exception rather than the rule, as pointed out by the Office of the Ombudsman in its 1999 report: "The Ministry has complied with the recommendations made, and is acting in accordance with the principle of cooperation and mutual assistance. This indicates that it has succeeded in coordinating its action with the public institutions whose functions require them to meet the various social and economic needs of residents."[10]

94. The Government of Costa Rica, mindful of the division of powers enshrined in the Constitution and in the General Law on Public Administration, has been concerned to find

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[10] Defensoría de los Habitantes, Informe Anual de Labores 1999, Chapter IV, page 144.

solutions to the problem of unlawful occupation of land, especially in the southern part of the country. The inhabitants of sites held without a licence enjoy all the formal and procedural guarantees provided by the legal system, and when an eviction takes place, they are entitled to be heard and to supply proof, if they have it, that their occupation is lawful.

95. In December 1997 the previous Government set up two commissions, one consisting of ministers and executive presidents, the other, which is still in being under the present Government, consisting of public officials from the institutions concerned, included representatives of the Ministries of Justice, Agriculture and Stockbreeding, Environment and Energy, External Relations and Worship, Public Security, Local Government and Police and Information and Foreign Trade, and from the Institute of Agrarian Development, the Institute of Housing and Town Planning, the National Geographical Institute and the Costa Rican Institute of Tourism.

96. Basically, this Commission has focused on moving forward and following up the various tasks of the different institutions and agencies involved in the regulatory plans funded by the Costa Rican Institute of Tourism, or by individuals themselves. Its functions include putting into action two regulatory plans in Pavones and the boundary plan to delimit the maritime/land zone by the National Geographical Institute; negotiating for and purchasing sites in the region to settle peasants; and stepping up security in the region. It should be pointed out that under the present administration this Commission has not engaged in negotiating for or acquiring property to resolve the situation. [11]

Police forces operating in the country

97. Law No. 7410 of 20 May 1994, called the "General Law on the Police", determines which police and security forces operate in the country. These are the State Security Department and the Special Intervention Unit, both of which come under the President of the Republic; the Civil Guard, the Rural Police Service, the Frontier Police, the Immigration Police and the police force responsible for the control of unauthorized drugs and related activities, all dependent on the Ministry of Public Safety, Local Government and Police; the Financial Inspectorate, which belongs to the Ministry of Housing; the Judicial Investigation Department which answers to the judiciary; the criminal police, answerable to the Ministry of Justice; the transit police, answerable to the Ministry of Public Works and Transport, and the municipal police forces.

98. The national budget for 2000 has made provision for the following posts within the various security forces: the Ministry of Justice – General Directorate of Social Adaptation - has a staff of 160 administrators, 291 graduate professionals, 243 technicians and 201 police officers; the Ministry of Security has 9,340 police; the Judicial Investigation Department has 691 officers, and the transit police has 885 inspectors.

99. The markedly civilian character of the police forces has been brought out recently by the presidential action of Dr. Miguel Angel Rodríguez, in Executive Decree No. 28504-G of 3 March 2000, amending Article 59 of the Service Regulation for Police Forces answering to the Ministry of Public Security. In future, the names of the different grades will be:

"Superintendent" instead of "Colonel"
"Commissioner" instead of "Lieutenant Colonel"
"Commander" instead of "Major"
"Captain of Police" instead of "Captain"

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[11] Information supplied by the Ministry of Justice.

"Intendant" instead of "Lieutenant"
"Sub-intendant" instead of "Sub-lieutenant"
"Police sergeant" instead of "Sergeant"
"Inspector" instead of "Chief"
"Agent" instead of "Superior".

100. The elimination of military ranks from the police forces of the Ministry of Public Security was implemented during his term of presidential office by Dr. Oscar Arias Sánchez, Nobel peace prize winner, in the period 1986-1990; however, the subsequent presidential administration restored them.

Private security forces

101. In parallel with the function carried out by these police forces, companies, local - communities and individuals make use of private guards or police units, to an ever-growing extent. Security agents of this kind are only empowered to protect by all legal means the physical safety and property of those contracting for the service, and those of persons within the area covered by the service.

102. For this purpose, the provisions of Chapter II, Title I of the General Law on the Police, concerning the ethical and juridical aspects of police action, apply to them in their entirety. In addition, a security force of this kind is forbidden to detain, search, or deprive of liberty any person, unless detected in the process of committing an offence.

103. Supervising security units of this kind is the responsibility of the Department of Private Security Services, answering to the Ministry of Public Security, which was created under the General Law on the Police, No. 7410 of 19 May 1994, regulated by Decree No. 23879-SP. These normative texts have replaced the previous concept of the Auxiliary Police by the Private Security Service. This new approach covers all the private security units in the country, whether or not they represent security firms.

104. The private security forces may only use specified permitted weapons, in accordance with the relevant rules (Law on Weapons and Explosives, No. 7530). According to Article 20, permitted weapons are pistols, revolvers, carbines, rifles and shotguns between 5.6 mm (22 bore) and 18.5 mm (12 bore), and which do not release more than one projectile in bursts or successively, do not possess an automatic fire selecting device and do not have the capacity to fit for launching explosives of any kind.

105. In order to carry out their activities, the Constitutional Chamber has reaffirmed that they must comply with various requirements, as set down in the registers of the Ministry of Public Security, obtain a firearms certificate, pass a psychological test and the basic police training, hold third party accident insurance and have completed nine years of basic general education.

106. In turn, the Constitutional Chamber has ruled, in admitting an action for unconstitutionality against Article 90 of the General Law on the Police, that foreigners may also be contracted for this kind of work. In May 1999 approximately 235 companies employing 50 foreigners and 4,800 Costa Rican citizens were registered with the Department of Private Security Services of the Ministry of Public Security.

107. The work of training and police training is the responsibility of the Francisco J. Orlich National Police Academy. The course of basic police instruction may be given by institutes

of higher education, vocational technical training institutes or private academies, through prior authorization by the Ministry of Public Security.

108. The ruling by the Constitutional Chamber laying down the requirements caused some initial conflict with the Police Law, since about 80% of people working in these companies do not have nine years of basic education. In order to resolve this problem and to legalize a factual situation in which about 600 small firms are operating outside the law, and about 5,000 Costa Rican nationals and foreigners are providing security services without authorization, there is a draft law before the Congress of the Republic to regulate private security services.

109. Moreover, in order to regularize the situation the Ministry of Security has set up an inspectorate for the private security units, and especially to deal with complaints made by individuals. Unfortunately, economic restrictions and the legal definition of an offence, because these units are acting on the fringes of the law, make it impossible to provide blanket supervision. It is hoped that these shortcomings can be rectified with the law now before the Congress of the Republic.

The municipal police

110. The functions of the municipal police have been defined in the new Municipal Code, which enables each of the country's 81 municipal authorities to decide what kind of policing it needs. There are presently seven municipalities which have built a police force, each with its own characteristics, namely, Alajuela, Belén, Santo Domingo, Montes de Oca, Heredia, Guápiles and Puntarenas.

The San José municipal police

111. The largest municipal police force is the one in San José, set up in 1992, which now has about 300 serving police officers. The requirements for joining the San José force are: to be a secondary school graduate, to be at least 1.70 m tall, hold a current driving licence, have a good manner, preferably be a resident of the canton, and be without any previous convictions.

112. The function of this police force is to safeguard law and order and the safety of the public within the territorial jurisdiction of the canton and in other cantons as authorized by the respective municipal councils. In considering public safety and law and order, account must be taken of a number of factors such as minor offences, larceny, robbery, assault, anything connected with drugs, disturbances, economic crime, environmental crime, street trading, the use of municipal licences and traffic control, among others.

113. Collecting a municipal tax to finance the municipal police has been ruled out by the Constitutional Chamber, in a recent judgement (December 1999) which declared unconstitutional the collection of a tax for the safety of the public, thus confirming an opinion of the Public Prosecutor of the Republic, to the effect that "the Constitution provides that public safety is free of charge". This has compelled the municipal authorities to find other means of funding, and a draft law for this purpose has been submitted to the Legislative Assembly.[12]

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[12] "No a la policía municipal - Procuraduría avala acciones de inconstitucionalidad..", La Nación, Saturday 2 October 1999. El País, page 8A.

114. As for training, before being employed municipal police officers must undergo an initial basic course of police training lasting 96 hours. Subsequently, once they are employed, they undergo continuing practical training supplemented by talks, lectures, workshops and seminars on various topics, human rights being among the subjects discussed.

115. The municipal police has a permanent base in each of the following districts of the capital: Luján, Otoya, Cuba, México, Pitahaya and Parque Central, each having cells to lock up detainees who are violent or dangerous. At present there is no detention centre as such, but in the near future suitable premises will be adapted to provide conditions adequate for detainees. For operational reasons, the Civil Guard and the Municipal Police collaborate in the use of the municipal cells.

116. As regards control and supervision, the city has a number of bodies to which complaints can be made concerning abuses of authority. These are the Municipal Council of San José, the district councils, the Commission for Citizens' Safety of the Municipality of San José, the Mayor's office, the headquarters of the municipal police, the Department of Human Resources, the Labour Arbitration Panel, the municipal boards and the neighbourhood councils. Aggrieved parties may also have recourse to national supervisory bodies such as the judiciary and the Office of the Ombudsman.

117. Every complaint or accusation against officers of the Municipal Police of San José is sent to the Labour Arbitration Panel of the Department of Human Resources for assessment and investigation. Depending on the gravity of the offence committed by the officer, sanctions may range from a warning to termination of contract or dismissal.

118. In spite of the existence of a system of interlocking controls, unfortunately there have been some accusations of abuses of authority or irregularities, some of which have been lodged by citizens by telephone, fax, telegram or in person, alleging irregular conduct on the part of the municipal authorities.

The municipal police of Alajuela

119. The municipal police of Alajuela, the second largest city in the country, consists of 40 members, and is expected to increase to 45 this year. The requirements for joining are the same as in the other municipal police forces: to have at least three years secondary education, to be without a criminal record, to pass the psychological examination and to be prepared to receive training in various fields.

120. The municipal police of Alajuela has an agreement with the municipality of San José for training its officials. Municipal officials also take part in seminars conducted by the Public Prosecutor's Office, in which the main topic is proper treatment of human beings and the protection to be afforded to them, including those who have breached public order.

121. The municipal police of Alajuela has no detention centres of its own, and has to coordinate with the police authorities the apprehension, detention and arrest of persons who fall foul of the Law. Its activities are supervised by the office of the Mayor and the Department of Human Resources.

122. According to official reports, although there have been some allegations of abuse of authority investigation has shown that the alleged laws were not committed or that the necessary element of proof was missing for charges to be brought, with the result that the complaints were dismissed and the allegations filed away.

The municipal police of Belén

123. In the case of the municipality of Belén, located in the province of Heredia, the police force has 30 members, of whom 10 are currently serving and 17 in training. The requirements for joining this new force are to be aged between 20 and 40, to be a Costa Rican citizen (by birth or naturalization), to be without a criminal record, to have completed at least the third year of secondary school, to be at least 1.70 m tall and in good physical condition, and to train for three months in the National Police Academy.

124. The curriculum for the training course for the municipal police includes the following subjects: personal relations, courtesy and discipline, weapons, safety of installations, compilation of documents, police procedures and intervention, policing ethics, self-defence, combating drugs, road safety, first aid, control of buildings and locations, human rights, police law, municipal law, the State and society, and physical training. In the coming months they will also have classes in computing and English.

125. This police force carries out public patrol and security duties within the municipality. It guards buildings and installations, controls and regulates traffic, collaborates with other national police forces, provides aid in the event of accidents or disasters and protects the environment, in a context of full compliance with the law.

126. In the particular case of the Belén municipality, there is no penal centre of its own, but its works in conjunction with the rural guard service of the canton. There is a client office to supervise its activities, and any citizen may make a complaint to the office in the event of any irregularity.

Municipal police of Montes de Oca

127. Finally, in the case of the municipal police of the canton of Montes de Oca, there is a group of 30 officers engaged mainly in looking after the municipal buildings.

The legal basis for the municipal police

128. The existence of the municipal police has however raised issues of a legal nature. A statement by the Public Prosecutor of the Republic in October 1999 said that "the rules on which its establishment is based violate the constitutional principles of legality, equality, reasonableness and proportionality". The issue also extends to the collection of municipal taxes for the purpose, as already explained.

129. The study by the Public Prosecutor stated that "the existing regulation for the operation of the municipal police is inadequate, because its existence does not comply with the principle of legality. However, if these regulatory norms were part of a law or of the Code itself, the defect would be cured. These norms should establish, develop and decide with clarity the powers of the municipality in this field."

130. As regards the collection of municipal taxes for the provision of security services, the Public Prosecutor stated that "there is a breach of the principle of reserved legislation - the power of the Assembly to enact laws - and the collection of the tax, regardless of whether it is a special levy, a tax or a charge, must be in accordance with article 121 (13) of the Constitution".

131. This pronouncement follows upon the submission of four claims of unconstitutionality dealt with by Chamber IV against articles 4 (d), 13 (b), 68 and 74 of the Municipal Code. These four actions questioned the existence of the municipal police, on the basis that this is the exclusive function of the State and must be provided free of charge.

132. In order to deal with this situation, a draft law to amend the Municipal Code has been submitted, and was published in the official gazette La Gaceta, No. 114 of 14 June 2000, introducing a municipal police tax. The tax for the police forces will be an addition to the charge payable on immovable property, and is likely to be between 0.05% and 0.3 % of the value of each property.

The budget of the Costa Rican penal system

133. The annual budget of the Ministry of Justice for 1999 was 9,561,039,000 colones, of which 6,905,648,483 colones were for the Directorate of Social Adaptation, the equivalent of 72% of the entire budget allocation.

134. For the year 2000, the national budget for the Directorate of Social Adaptation is 9,582,560,752 colones, not including transfers.

135. This sum has been broken down as follows:

a. Design, construction and upgrading of the prison infrastructure: C 568,953,645 ($1,841,273)
b. Care and upkeep of prisoners: C 8,065,351,031 ($26,101,459)
c. Analysis of the legal and behavioural aspects of prisoners: C 568,953,645 ($1,841,273)
d. Development of strategies for prison security: C 189,651,215 ($613,757)
e. Development of training programmes: C 94,825,607 ($306,878)
f. Repatriation of prisoners in line with international agreements: C 94,825,607 ($306,878)

The budget of the Ministry of Public Security

136. For the year 2000 the Ministry of Public Safety, Local Government and Police has the following sums allocated for its various units:

	Colones	Dollars
National police	16,816,540,440	54,422,460
Urban police	2,001,969,100	6,478,864
Police infrastructure	200,196,910	647,886
Radio patrols	200,196,910	647,886
Rural police	200,196,910	647,886
Private security	200,196,910	647,886
Frontier police	200,196,910	647,886

Murder statistics for the country

137. As regards the statistical data for homicides for every 100,000 inhabitants, the figures show that in 1996 the percentage figure was 6 cases, with a total of 189 cases dealt with by the Judicial Investigation Department. The figures for 1997 and 1998 showed that the average percentage figure was still six, although in 1997 there were 214 homicides and in

1998 203 violent deaths. In the period 1999 - March 2000, 225 homicides were committed in the country, plus four cases which have not yet been defined pending medical reports. [13]

Statistics for deaths in the prison system

138. According to figures for 1997, the total prison population was 5,454, representing a proportion of 159 per 100,000 of the population. In 1998, the prison population was 5,821, or 166 per 100,000; in 1999, it was 7,676, or 216 per 100,000.

139. The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) has recently stated that between 1992 and 1999 Costa Rica's prison population grew from 3,375 to 8,526. This represents an increase of 155% in a period of seven years, the largest increase in Latin America. Subject to these variables, the number of persons in detention per 100,000 is 229, the second in the continent. [14]

140. On the other hand, in May 1999 the total prison population was 8,404, of whom 5,278 belonged to the institutional category, 691 to the semi-institutional category, 242 to the category of children and adolescents, and 2,193 were in the category of community supervision." [15]

141. It should be borne in mind that in 1999 the prison population benefited from the introduction of the "deferment under supervision" procedures, a product of the new law on criminal procedure. If the relevant sector of the population, and the remainder in the community are disregarded, the net figure would be 173 per 100,000 inhabitants. Further details will be found in the annex to the report on the prison population issued by the Department for Research and Statistics of the Ministry of Justice for May 1999.

142. The procedures for deferment under supervision, laid down in article 25 of the Code of Criminal Procedure, enable a sentence to be commuted in the form of work for the community, in the case of minor offences only. This alternative has enabled many victims to recover property lost as a result of crime, and has benefited communities, who receive manpower free of charge.

143. As regards deaths occurring in the national prison system in recent years, 72 individuals have died, a figure broken down as follows: 24 as a result of homicide, 13 from suicide, 29 from natural causes and 7 from accidental death.

144. According to the records of the Ministry of Justice, the most recent fatality in the prison system was the case of Mr JCLM, aged 46, who died at the hands of his cellmate in the penal centre of La Reforma on 10 October 1999. JLCM died after being stabbed 12 times by the person sharing his cell, in what seems to have been a crime of passion.

145. The authorities working in the prisons have been vigorous in making searches in order to detect weapons; however, the prisoners always manage to conceal them while in the presence of the guards.

146. If we look at the period 1994-1998, the prison police was involved in the following cases of homicide, while carrying out their role of containment and in circumstances of

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[13] The annex "Trends and figures" gives the figures from 1986 to date.

[14] "País con mayor aumento de reos", La Nación, Wednesday 1 March 2000. El País, page 5A.

[15] "Evolución y tasas de población penitenciaria", Instituto Nacional de Criminología, Departamento de Investigación y Estadística, June 1999, page 2.

escape or attempted escape: on 11 February 1994 Scott Wood died from two gunshot wounds while attempting to escape; on 11 March 1996 Mr Martín Montalbán Hernández died from a single shot while attempting to escape; on 8 May 1996 Mr German Ugalde Quesada died during an escape attempt and on 2 December 1998 Mr Cristián Piedra Azofeifa died during an escape attempt.

147. A decision strongly challenged by the Office of the Ombudsman, as reflected in its 1999 report, was the order given by the President of the Republic to the prison authorities, from 19 November 1998, to shoot at persons participating in the escape. This order was given because of the jailbreak attempts and other threats of disorder in the La Reforma prison. [16]

148. The Office stated that "The lack of precision in ad hoc instructions of this kind, coupled with the lack of adequate training, causes confusion among security agents, who on carrying them out are invariably afraid of being held responsible for such laws and losing their jobs as a result. Thus the reaction shown by the security agents is extremely violent, because in order to avoid escapes or riots, they have adopted defence and security mechanisms which could impugn the physical integrity and lives of persons deprived of their liberty".

149. "One example of this was the most recent escape attempt in the La Reforma centre. One of the individuals attempting to escape was recaptured ten minutes later. Afterwards it was found necessary to transfer him to the La Reforma Clinic, and from there to the Alajuela hospital, because he had sustained an injury to the head which required eight stitches, as well as a gash in one of his arms. [17]"

150. In spite of the view expressed in the report by the Ombudsman, in July 1999 the third chamber of the Supreme Court of Justice dismissed a complaint of incitement to homicide against the President of the Republic, Dr. Miguel Angel Rodríguez. The complaint was lodged by Mr LARG on behalf of a number of prisoners who had taken part in an escape attempt at the La Reforma prison in December 1998. On that occasion the prisoner CPA died.

151. Because of the foregoing, the complaint alleged that the decision by the President to authorize those guarding the prisoners to open fire against those attempting to escape constituted the offence of incitement to homicide. In the preamble to its ruling, the Chamber held that "in the case under consideration, there is no case to answer because the laws complained of do not fall within any definition of a criminal offence". The decision by the President had already been challenged in the Constitutional Chamber, but the challenge was rejected there too. Likewise, for the authorities of the Directorate of Social Adaptation, the procedures which were authorized did not at any time depart from the guidelines laid down by the United Nations.

152. It should be made clear that the order is carried out only as a last resort in order to capture fugitives. The order to fire is not an order to open fire in an arbitrary or indiscriminate manner such as to place lives at risk, but rather the ultimate recourse of the guards in securing detainees who are seeking to evade justice.

Rules of the juvenile justice system

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[16] Office of the Ombudsman, Informe Anual de Labores 1999, page 135.

[17] Idem.

153. The Costa Rican legal order provides for special treatment within the criminal justice system for juveniles, governed by the Law on Juvenile Justice, promulgated by Law No. 7576 of 6 February 1996.

154. This instrument responds to the provisions of articles 37, 39 and 40 of the Convention on the Rights of the Child, which establish an undertaking on the part of States not to subject juveniles to torture or to cruel or inhuman treatment, and to treat them with the dignity and humanity inherent to the human person; to adopt where necessary measures for the rehabilitation and reintegration into society of a child who is a victim of torture, abuse or exploitation; and to adopt a special procedure, with procedural guarantees, for children who are alleged to have infringed the criminal laws or who are accused or found guilty of infringing them.

155. The new Law replaces the Organic Law on Tutelary Jurisdiction for Minors (Ley Orgánica de la Jurisdicción Tutelar de Menores), promulgated in 1963, which tended to regard juveniles as passive subjects of the law, without according them the guarantees enjoyed by adults under the criminal law. They were treated as being incapable and in need of guardianship and assistance.

156. The new instrument adopted a model which provides sanctions and guarantees at the same time. It is akin to the criminal justice rules applying to adults, in that it refers to the individual rights and guarantees of persons accused of an offence. However, it has features adapted especially to trials involving adolescents and juveniles: criminal responsibility, restricting the role of the criminal law to the minimum, a wide range of sanctions, especially in the field of social rehabilitation, and a reduction to the minimum of penalties involving a loss of liberty.

157. The subjects of this legislation are persons aged between 12 and 18, a dividing line being laid down at age 15. This special law is supplemented by the Convention on the Rights of the Child, adopted by the Legislative Assembly under Law No. 7184 of 12 July 1990, published in the official gazette La Gaceta No. 149 on 9 August 1990; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, and the United Nations Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines.

158. According to the statistics held by the judicial authorities, by the end of 1998 the number of juvenile cases in the justice system was almost the same as for the end of 1997, since the increase was a mere 15 cases. In 1997 there were 2,348 cases, and in 1998 the courts dealt with 2,363 cases, reflecting an increase of barely 0.64%.

159. In 1998, the number of completed cases of juvenile crime was 8.065, i.e., 510 more than in 1997, when 7,555 cases were dealt with. In the course of 1998 there were 542 conciliation hearings, in which 70.1%, or 380 cases, resulted in a settlement, which was not achieved in the remaining 162. In the course of 1998 charges were laid against a total of 8,683 minors, of whom 81.7% were males and 17.4% females; on in 0.6% of cases was the sex unknown. Thus for every 100 females brought before the courts there were 460 men, a lower proportion than in 1997 when 547 males were charged for every 100 females.

160. As regards the type of case, in 1998 61.1% (5,305) of minors were charged with criminal offences, 23.6% (2,045) with contraventions and the remaining 12% (1,043) with

traffic offences. Looking at the categories of offences involved, we find charges of robbery, larceny, criminal damage, simple battery, grievous bodily harm and, to a lesser extent, threats. Among the contraventions we find violent behaviour, petty larceny, obscene language, minor damage, disorder and assault. In that particular year there was only a small number of cases of disrespect for the authorities, compared with 1997, but a high percentage of offences against the person. [18]

161. As for the type of offence, the following may be quoted for 1998: property offences 3,188; offences against the person, 882; sexual offences, 337; offences against liberty, 219; infringements of the Law on Psychotropic Substances, 231; offences against the administration of justice, 97; others, 351.

162. In the year under review, 3,353 cases were dropped; 2,844 were dismissed with prejudice; 148 were dismissed without prejudice; there were 784 findings of contempt of court; 236 joint trials, 360 judgements; 180 conditional settlements; 241 findings of lack of jurisdiction; 806 findings of prescription; 653 proceedings were provisionally stayed and 714 cases were resolved in other ways.

163. As regards the measures ordered, in 1998 these were as follows: a warning in 61 cases, probation in 71, community service in 19, restitution in 2, an order for guidance and supervision in 30, domiciliary confinement in 4, detention in a special centre in 53, and a conditional sentence of detention in 6.

Juvenile detention centres

164. Within the Department of Social Adaptation there is a division for adolescent and juvenile offenders. This consists at present of the Zurquí Juvenile Training Centre, which receives the juvenile prison population, both male and female, following indictment and sentence, and the Centre for Young Adults, which receives male offenders who have reached the age of 18 but were detained before that age. This Centre is located in the La Reforma centre, but the inmates are separated physically and materially from the rest of the prison population.

165. The Zurquí Juvenile Training Centre presently contains 23 adolescents, of whom 20 are male and 3 female (January 2000) and the Youth Centre has 27. [19]

166. The Zurquí Juvenile Training Centre was inaugurated in December 1999. Its refurbishment cost 120 million colones ($388,399), and it provides a new technical model for social care, where male and female adolescents live together in an institution equipped with all the facilities for their rehabilitation and training.

167. The Centre has 4 wings for males, distributed as follows: wing A has 9 young men, wing B 6, wing C 5, and wing G is unoccupied. Of the total number of occupants, 8 are pre-trial detainees and 12 have been sentenced. There is also a wing for young women. As of 5 January 2000, there were 3 young women in it, of whom one was pre-trial and the two others sentenced for homicide.

168. Each wing has units capable of holding 2 to 8 young people, but because numbers are low they are presently distributed two by two. Each wing has a television, a large dining room, table games and a small garden. In addition, during the day, as well as the formal

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[18] Departamento de Estadística, Poder Judicial, tables. 7 and 8.

[19] The latter figure was supplied by the Department of Social Adaptation on 10 August 1999.

therapy and training sessions there are continual sporting and cultural events held within the facility, in the gymnasium.

169. The centre, located outside San José and has a kitchen and 4 cooks who between them prepare the four meals: breakfast, lunch, tea and supper. The centre also has a laundry and is about to install a bakery for its own consumption needs.

170. Within the centre there is an educational centre operating at different levels, both primary and secondary. Lessons are given by 4 teachers, two from the Ministry of Justice and two from the Ministry of Education. The young people also receive short guidance and handicrafts courses.

171. The centre also has a doctor and a dentist, who attend regularly once a week, and a nurse. There is also a gynaecologist available when required.

172. The supervising staff are trained at the Prison Staffs Academy, where they undergo a psychological assessment to determine whether their profile is the right one for supervising minors. They also receive regular training courses in subjects such as the handling of operational groups. The internal staff only uses a police truncheon, whereas the outside guards uses regulation weapons.

Provisions of the Law on Juvenile Justice

173. As already explained, a new specialized legal instrument has been promulgated for criminal procedures involving minors, so as to provide greater guarantees to a minor in the criminal justice system. In articles 10 to 26, this Law on Juvenile Justice provides a range of basic special guarantees from the beginning of the police investigation and throughout the judicial process, in order to ensure that all procedural safeguards are observed when the case is decided. These guarantees are reflected in the Constitution, in the international instruments duly ratified by Costa Rica and in the laws on the subject.

174. These guarantees are: the right to equality and to non-discrimination, the reduction of preventive detention, the principle of specialized justice, the principle of legality, the presumption of innocence, the right of due process, the right to remain silent, the principle of "non bis in idem", the principle of applying the most favourable law and rule, the right to privacy, the principle of confidentiality, the principle of inviolability of the defence, the right of defence, the adversarial principle, the principle of nationality and proportionality, and the principle of finality of sanctions.

175. In accordance with articles 58 and 59 of the Law on Juvenile Justice, the maximum term of preventive detention for minors is four months, which makes it necessary for cases to be heard quickly.

176. Where offences have been committed by minors, the case is heard in the first instance by the juvenile criminal courts, the Higher Criminal Court of Cassation being the appeal jurisdiction, and the Court of Execution of Juvenile Criminal Penalties is the competent court during the enforcement stage.

177. When the involvement of a minor in an offence has been ascertained, the law prescribes three kinds of sanctions: 1) social and educational; 2) guidance and supervisory; and 3) custodial. The socio-educational measures include warnings, probation, community service orders and reparation of the harm done to the victim.

178. Guidance and supervisory measures involve taking up or changing a certain place of residence, ceasing to have contact with certain individuals, prohibiting visits to bars, discotheques or specific places of entertainment, registering with a centre of formal education or other whose object is to teach an occupation or trade, getting a job, refraining from alcohol, hallucinogenic, enervating, narcotic or toxic substances which lead to addiction or are habit-forming, and ordering the detention of the minor in a health or detoxification centre.

179. These two types of measures are based chiefly on article 18 of the Beijing Rules, which defines the majority of the disposition measures. It stipulates that "A large variety of disposition measures shall be made available to the competent authority" in order to prevent, as far as possible, confinement in penal establishments. This system also seeks to reduce to the minimum the intervention of the prison system in the form of ambulatory sanctions, which in turn ensures that a minor will not be removed from the supervision of his or her parents.

180. As regards deprivation of freedom, article 121 (d) of the Law on Juvenile Justice states that this may take three forms: domiciliary confinement, confinement during free time and confinement in specialist centres. This article complies with article 19 of the Beijing Rules, which states that "the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period." The maximum period of detention is 15 years for those over 15 and under 18, and 10 years for those over 12 and under 15.

181. In its legislation Costa Rica has adhered closely to international recommendations and has reflected these in the Law on Juvenile Justice, encouraging social intervention to enable a young person or adolescent to maintain his or her personal development and be reintegrated into the family and society, which in turn implies at least partial re-education and re-socialization.

182. The institutional follow-up in the treatment of offending adolescents and young people by the Directorate of Social Adaptation is found in the two areas which have been developed, the sub-level of institutional care and the Programme of Alternative Sanctions for Young People, consisting of care and supervision for young people awarded an alternative penalty to detention. The programme of sanctions includes supervised liberty, community service and guidance and supervision orders.

183. According to statistical sources, in percentage terms the legal status of minors under the aegis of the Directorate of Social Adaptation between February 1998 and February 1999 was as follows: 77% under an alternative sanction, 15% convicted, 7% pre-trial and 1% in receipt of maintenance. The annexes include monthly records for the period stated.

184. The Law on Juvenile Justice has been in force for four years, but is still encountering social obstacles and budgetary limitations. The shortage of personnel and transport - few of the authorities have access to a car to visit young people and supervise the implementation of the alternative methods - makes it difficult to apply the sanctions effectively.

185. These limitations are found in daily practice; for example, when a young person is ordered to perform community service, few institutions will agree to this. If the penalty is to get a job, it comes up against the prejudices of employers who are disinclined to work with young people who have had problems with the Law. Other legal provisions may require the young person to learn a trade or profession, but in most cases they do not have the clothes,

tools or travel tickets to attend courses or training. In order to resolve this situation, the prison authorities are working with the Ministry of Education and the National Apprenticeship Institution to find solutions.

186. In order to deal with young people with a drug problem, where the court's order is for rehabilitation along these lines, the country is hoping to inaugurate a special centre by mid-2000 to treat young drug addicts. This project already has a budget of 18 million colones ($58,252) and will be located in the former premises of the Rehabilitation Centre of the Institute of Alcoholism and Drug Dependency (IAFA).

187. In spite of these limitations, "the programme of alternative sanctions has achieved significant results. The majority of the 244 juveniles subject to socio-educational sanctions have received continuous support for their rehabilitation, although 10% have not been looked after for lack of resources or because they had no fixed abode". [20]

188. Since September 1999 a pilot project has been in operation involving 72 young people sentenced for having committed an offence; they are taking part in a volunteer programme with the fire brigades, as a means of palliating the harm they have done to society.

189. The project is taking place in 26 places in the country, in the provinces of San José, Alajuela, Cartago and Guanacaste, over a period of three months, and is supported jointly by the Ministry of Justice and the National Insurance Institute. The programme seeks to involve young people in the work of a fire station, as an alternative to confinement in a juvenile centre.

190. The organizers of the project say that it "seeks to encourage comradeship and the formation of values and thus wean the young person away from street life". The young people will receive training in first aid and the handling of emergencies and equipment, while forming part of the personnel of the station. [21]

191. Institutional support is provided throughout the country, and for this purpose there are networks of community support, as well as specific projects which are formulated jointly with other governmental and non-governmental institutions. The reintegration of a young offender into society is a delicate process, and the prison system has therefore set up an institutional and communal network in various parts of the country to help young people to perform services for the locality when the courts have made an order to that effect.

192. The application and operation of the Law on Juvenile Justice has presented a number of problems. In principle, although the Law lays down the principle of a special justice system, there is only one juvenile criminal court, sitting in San José; in the rest of the country, cases involving minors are heard by the Mixed Family Courts, the civil courts, and the combined Juvenile and Labour Courts.

193. As regards the criminal courts review jurisdiction, when the Law on Juvenile Justice first came into force this function was carried out by the juvenile criminal courts sitting as an appeal bench, which meant that the same court which had imposed the penalty had to review or amend it.

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[20] "Tropieza ley juvenil - dificultades para aplicar sanciones alternativas", Diario Al Día, 21 February 2000, page 12.

[21] "Jovenes condenados serán bomberos", La República, 27 August 1999, page 8A.

194. From 1998, this function has been taken over by the courts for the execution of penalties (juzgados de la ejecución de la pena). The difficulties which have arisen are that there are no uniform criteria applicable in the various courts when penalties have to be awarded, which indicates non-compliance with the principles of rationality and proportionality. There are examples of such situations in penalties ordered for sexual offences, in which a socio-educational sanction has been awarded or a community service order made, or in cases of contraventions being punished by probation for up to two years.

195. There are also problems with the recording of information; omissions have occurred in the despatch by the judicial authorities to the National Institute of Criminology of certification of the awards made and of writs of liquidation of the penalty.

196. In the case of the Programme of Alternative Sanctions, when the courts order a penalty other than imprisonment, on many occasions they fail to record on the file a clear and precise instruction as to where the minor is to be located, or the date on which the award is to be confirmed, or fail to send the notice of the award, etc. These administrative shortcomings tend to hamper the Programme, and the offence often goes unpunished because a penalty has already been prescribed when the case is forwarded to the Programme of Alternative Sanctions.

197. It should be put on record that in its 1999 report, the Office of the Ombudsman stated that in spite of the efforts of the authorities, "Costa Rica still does not have a culture supportive of non-custodial sentences", and went on to recommend the "building of a collective sense of support for the young offender, because as Gaetano de Leo would say, deviancy is not a problem for the school system or for the so-called psycho-pedagogical teams, because the former is a regulatory institution which rejects the deviant, and the latter have shown themselves to be totally sterile or worse, manipulative. Solving the problem of deviancy cannot be delegated to anyone; it can only find its place within the basic community services, without ambiguous exportation". [22]

The systems of psychiatric care in Costa Rica

198. The Government of Costa Rica wishes to inform the international community about the system of psychiatric care in the country, a field usually omitted from national reports.

199. In Costa Rica, social security provides universal coverage, both to contributors and to non-contributors, through the Costa Rican Social Security Fund (CCSS). The system of psychiatric care, which has traditionally been perceived as a system of institutions but has been given a new profile in recent years, is concentrated in the two psychiatric hospitals, the Manuel Antonio Chapui National Psychiatric Hospital and the Roberto Chacón Paul National Psychiatric Hospital. In addition, the Calderón Guardia Hospital, a general hospital, has a psychiatric service with 26 beds. In the remainder of the 7 regional hospitals and the 13 on the periphery of the capital, where there is a psychiatrist on the staff, psychiatric patients are kept although there are no special psychiatric beds. Care in this field accounts for 3.5% of the institution's health budget.

200. The Constitution guarantees all citizens, without distinction, the enjoyment and protection of all civil, political, economic, social and cultural rights. Patients with emotional disorders therefore enjoy all the rights enshrined in the chief human rights instruments ratified by Costa Rica. In its turn the Government, concerned with the specific problems of that part of the population which suffers from disability, has promulgated Law No. 7600 of 2

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[22] Defensoría de los Habitantes, op. cit, page 138.

May 1996, published in the official gazette La Gaceta on 29 May of the same year, entitled "Law on Equality of Opportunity for Persons with Disabilities".

201. It is important to emphasize that as guidelines for guaranteeing the human rights of psychiatric patients, we have the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, which are important instruments for the creation of specific legal rules.

202. Costa Rica took part in the Conference on the Restructuring of Psychiatric Care in Latin America, held in Caracas, Venezuela, on 11-14 November 1990, at which the "Caracas Declaration" was adopted. Since then the country has been undertaking a major transformation of psychiatric care, following the guidelines of the Caracas Declaration, implying a change in the care model, which is now centred on the community and which safeguards the fundamental rights of the mentally ill.

205. Finally, within this legal framework Costa Rica, by means of Law No. 7948, sanctioned by the executive branch on 22 November 1999 and published in the official gazette La Gaceta No. 238 on 8 December 1999, adopted the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities.

The ILANUD report - O.P.S. - CENARE

206. In June 1997, a number of international organizations such as the Pan-American Health Organization, the Latin American United Nations Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) and the University of Umea, in Sweden, combined their professional forces to prepare a report on the human rights situation of the mentally ill in the country.

207. The most relevant points in this report are the following:

208. The report mentions that in spite of having a significant set of rules on the human rights of psychiatric patients, these have not been widely disseminated and are little known in the country. It was only with the promulgation of Law 7600 and the adoption of the "Health Insurance Regulation" of the CCSS that psychiatrists working in the public system showed greater interest in the documents relating to the human rights of patients.

209. The document states that "there is no official body in the country specifically to monitor and enforce respect for the human rights of the mentally ill and their families. The Office of the Ombudsman has distinguished itself by its interest in safeguarding and defending these rights; however, its work has been confined to specific actions in the context of particular situations". [23]

210. The right to informed consent, not to be confined in isolation cells, to have one's own space, to be decently dressed, to be treated with due regard for one's dignity, to enjoy privacy, to be protected from sexual, physical or psychological abuse, etc.; these rights are often violated, although unintentionally, as a result of practices and routines which have prevailed in psychiatric institutions since time immemorial. Others, such as the right to read one's own clinical history, to refuse certain diagnostic and therapeutic procedures and to have sexual relations, are questioned on the basis of clinical judgement or practicality.

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[23] CCSS, ILANUD, OPS and others, Derechos Humanos de las Personas con Enfermedad Mental en el Sistema de Salud en Costa Rica,, 1997, page 11.

211. Another problem in the institutions, according to the report, is the lack of special programmes for children and adolescents. In the psychiatric institutions the traditional sex roles are perpetuated, and this makes it difficult for men to play a part in the activities of family life. Many of these shortcomings are the result of a predominant cultural model.

212. One situation which has sparked off legal and medical controversy is the use of electroconvulsive therapy (TEC), which can be a source of risk to physical integrity. To administer this, it is sufficient to have the general consent signed on entry and, even in cases where the family and the patient object, the procedure is used if the psychiatrist considers that there is an imminent danger of suicide. Although TEC is regulated, the study recommends that "it should be periodically reviewed, together with its extent and the monitoring of its use".

213. Another aspect currently being considered by the competent authorities is the complaint about the legality of the practice of sterilization in one of the country's psychiatric hospitals. This procedure is carried out with the permission of the family or the National Children's Council - in the case of a child - and is approved by a Sterilization Committee. The debate centres upon whether there is a violation of the right to physical integrity. It is accepted by the medical authorities that sterilization may never be used as a treatment for mental illness.

214. One point worth noting in the report is that as regards respect for the dignity of the patients, "in general, the opinion expressed by those interviewed is that the staff manage to treat them with respect, and there has been a noteworthy reduction in the instances in which patients were called by nicknames and treated with disrespect or with outright hostility." [24]

215. As regards sexual, physical and psychological abuse, in all care centres extreme measures are taken to prevent this category of outrage, and administrative measures, including dismissal, are used to punish employees found guilty of it. In residential centres, however, abuse between patients is common, including homosexual attacks.

216. As regards medication, this responds to the patient's fundamental health needs, and is only administered for therapeutic or diagnostic purposes and never as a punishment or for the convenience of third parties. This is fully in line with the right not to be punished or tortured, laid down in the Convention against Torture and the Belém do Pará Convention.

217. When physical restraint has to be used, the practice of the medical authorities is not to subject any patient to physical restrictions or to lock them up against their will, except in accordance with the officially approved procedures of the psychiatric institution and only when it is the only available means of preventing immediate or irreparable harm. These practices may not be prolonged for longer than the period strictly necessary to achieve the desired medical objective. For this purpose, it has been established that any patient who has to undergo such measures must be kept in decent conditions and under the immediate and regular care and supervision of qualified personnel. His relatives or personal representatives must also be informed.

The Dr. Roberto Chacón Paut Psychiatric Hospital

218. Concerning the comments in the report, the authorities of the Dr. Roberto Chacón Paut National Psychiatric Hospital have the following observations to make: The Chacón Paut Hospital only admits adults. On 25 August 1999 it had 180 long-stay patients and 16 short-

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[24] CCSS, ILANUD and others, op. cit., page 14.

stay patients, who are kept for an average of 10 days. All the patients have severe physical and mental disabilities.

219. The Hospital has a specialist library carrying official documents on the national and international rules governing the protection of patients' human rights.

220. The Hospital does not have any equipment for TEC and does not presently carry out sterilizations. At a certain period sterilizations were carried out when the capacity for motherhood was seriously affected by a major psychiatric disorder. For this purpose, the relevant legal procedures laid down in the health regulations were followed.

221. The directors of the Chacón Paut Hospital have taken steps to protect the patients, ensuring that as far as possible the patients are self-sufficient in attending to their own needs. No domestic tasks are carried out for male patients. There are also special guidelines on the treatment to be given to adults. All the patients receive assistance to the extent they require it.

222. For the purpose of protecting physical integrity, when by reason of their pathology it is necessary to tranquillise them, they may be tied down with strips of fabric for as long as their condition requires it. The Hospital does not have any isolation cells and has no record of cases in which "methods of curative security" have been applied. As of the date of submission of this report, according to the Hospital authorities, no complaints have been received about sexual or psychological abuse of patients on the part of the hospital staff.

223. The Hospital also has residential units in which the patients play a part in keeping their own house clean and carry out tasks such as the cleaning and washing of clothes, for which they have an automatic washing machine. These tasks are part of the therapy and they are not paid for them. As part of the occupational therapy programme, a varying group of patients keeps the garden areas tidy, but this is also therapeutic and they are not paid for it.

The Manuel Antonio Chapui Psychiatric Hospital

224. With regard to the observations in the ILANUD report, the authorities of the Manuel Antonio Chapui National Psychiatric Hospital, the largest and most significant in the country, felt it appropriate to report on the actual human rights situation of people with disabilities who are kept at this hospital centre.

225. Concerning the dissemination of the national and international rules on the protection of the human rights of patients, the National Psychiatric Hospital, since the entry into force of the Caracas Declaration in November 1990, has attempted to disseminate these principles and everything relating to the restructuring of psychiatric care by means of workshops, lectures and publications. It has also spread them through the continuing education of the hospital staff.

226. In each wing of the hospital there is a poster explaining the rights of the patients, and this information is given both to the patients and to their relatives. Within this training scheme, in 1998 there were a number of workshops for the nursing staff on the rights of patients, and in 2000 it is expected that 100% of the staff will have had this instruction. The Hospital also has a Bioethics Committee which in September 1999, together with other hospital officials, finalized the first training course in the field of bioethics.

227. The procedure established for the admission and discharge of patients is defined in very clear terms: the patient may be admitted at any time in the 24 hours of the day, and in emergency will be received by the doctor on duty. Once the patient has been assessed, it will be decided whether he is to be kept in; depending on the pathology and the degree of disturbance?, he will be transferred to the appropriate wing, where he will be under the care of the doctor responsible. For discharge, it is the wing doctor on duty who decides if the patient is in a state to be let out.

228. As for care for children and adolescents, the Hospital has the following programmes:

a. a surgery for children and for adolescents;
b. a special wing for investigating assaulted children;
c. a protection team for adolescent mothers;
d. individual and group care for children and adolescents, by interdisciplinary teams;
e. training programmes for general and other doctors caring for the mental and psychiatric health of children;
f. a teaching programme for parents - fathers and mothers;
g. groups for handling boundaries.

229. The juvenile patients do not live with the adults, as there is a special wing for them, which is separate from the remainder of the building. Out-patient surgeries for children also take place in a special area. The premises are decorated with children's pictures, there is a play area and a swimming pool which children may use according to a timetable.

230. As for the use of electroconvulsive therapy (TEC), all the technical staff of the hospital are aware of the existence of rules for it, so that in all cases where it is practised this takes place with the informed consent of the patient and his family; when, in exceptional cases, the consent of the relatives cannot be obtained, a committee of three psychiatrists makes the decision.

231. The therapy is used in accordance with the rules known as "Norms for Electroconvulsive Therapy", which provide as follows, in article 3 paragraph 1 (1), (2) and (3), and in paragraph 2 (1) and (2):

"3. Indications for use:
The indication for TEC is based on a combination of factors: a diagnosis of the case, the nature and severity of the symptoms, the history of previous treatment, a prior consideration of risks and benefits in relation to the viable treatment options.
TEC, as a treatment of first choice:
1. When there is a need for a rapid therapeutic response, when the severity of the disorder implies an immediate risk to health (aggravation or complications),or to the patient's life.
2. When the risk of other treatments exceed those of TEC, especially if they endanger the patients' health or life.
3. When there is a history of deficient response to medicines and prior good response to TEC, in previous episodes.
4. Secondary use of TEC.
5. Secondary use of TEC is understood as use made following the attempt to treat with pharmaceutical drugs.
6. When there is failure to respond to medicinal treatment.
7. When adverse effects are considered to be inevitable with medication and are less probable with TEC or are expected to be less severe."

232. The use of the therapy is made known through the publication of the rules referred to above, and this enables it to be monitored and kept to these specific instances, strictly within the rules. Checks on its use with individuals are noted and reviewed by the interdisciplinary team which carries out TEC, so that the cases can be followed up as part of the therapeutic treatment.

233. As regards sterilization, the Chapui National Psychiatric Hospital has never carried out a sterilization procedure. What happened in the past was that its use in other hospitals was recommended, but such recommendations are now in abeyance. At present there is a counselling service in sexual health and reproduction.

234. By way of example, it is worth noting that on 9 June 1999 Executive Decree No. 27913-S on reproductive health was published in the official gazette La Gaceta No. 111. This decree sets up the Inter-Agency Committee on Sexual and Reproductive Health and Rights, sets aside the Sterilization Regulation and orders implementation throughout the public health system of the counselling programmes on sexual and reproductive health.

235. This Decree is rooted in respect for the autonomy and integrity of individuals in taking decisions on their own health, and is centred on the right of individuals to obtain timely, complete and accurate information about the procedures concerning sexual health and reproduction.

236. The hospital authorities have received complaints in the past five years about sexual or psychological abuse of patients by the staff, and these occasional complaints have been duly investigated to ascertain responsibility in each case. The complaints are channelled through the Office of Oversight of Services, which receives and forwards to the appropriate head of service complaints received from the users. In turn, the service in question must inform the central committee of the Costa Rican Social Security Fund of all complaints received and the outcome of the investigation.

237. At the National Psychiatric Hospital no distinction is drawn between the treatment provided for women and for men, and there is no discrimination or privilege based on sex or other distinguishing feature. Consequently, no domestic tasks are allotted so as to favour male patients, as the ILANUD report points out.

238. To apply physical restraint, the authorities of the medical centre use drugs, physical control and therapeutic isolation rooms, each measuring approximately 11 square metres, with adequate ventilation and sanitation and a bed The rules governing physical restraint and therapeutic isolation are currently being revised.

239. As regards the type of work done by the patients, the tasks are entirely therapeutic and range from simple ones to fairly difficult ones, depending on the mental and physical capacity of the patient and his or her tastes or preferences.

240. In the event of abuse, the patient has various channels of complaint. The first is to complain to any member of the interdisciplinary treatment team; there are also complaint boxes at various places in the hospital, both inside and outside the premises. There are public telephones in the hospital and outpatient areas, and finally, there is an office called the Office of Oversight of Services, the main function of which is to investigate complaints made by patients, relatives, and their representatives.

241. As for inspection mechanisms at the hospital, inspections are carried out at all levels, from the lowest tier of management to the higher authorities.

242. One of the key problems in caring for patients with psychiatric illnesses in this country is abandonment by their relatives. In September 1999, the National Psychiatric Hospital had as residents approximately 300 persons whose relatives had consigned them to oblivion. More than half of these are adults over the age of 60 who have been admitted because of bouts of schizophrenia or because of mental retardation and senility. Some of these have regarded the hospital as their only home for 25 or 30 years, and the cost of their upkeep for the institution is around 10,000 colones a month ($32.26).

243. In order to cope with this situation, the authorities of the main hospital centre have adopted a range of measures for the year 2000, such as installing 150 of these patients in one of the wings of the hospital, so that they can make their own lives there as if at home. For this purpose, the patients are being taught the ground rules of living in a family group, as well as household tasks and personal hygiene, such as bathing, cooking, washing and attending to one's toilet, and also the value of money, so that they can deal with property.

244. The idea behind this project is that the patients should become independent of the hospital while remaining under medical care, since they cannot give up their treatment. The persons involved in this initiative may go outside the institution and work in one of the trades taught in the hospital, such as agriculture, carpentry or crafts.

245. In addition to this project, the Modernization Programme of the Costa Rican Social Security Fund is preparing a project on "Setting up a residential unit for long-stay users", which consists of setting up home units for about 10 people in various communities, with the help of the hospital, State institutions and community organizations, which will enable patients to be reintegrated into their communities.

246. According to the provisions of the Constitution, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the American Convention on Human Rights, the Health Code and Law No. 7600, it is expressly forbidden to subject patients to clinical tests or experimental treatments without their informed consent, except where the patient is incapable of giving informed consent, in which case he or she may only be subjected to a clinical test or to experimental treatment with the approval of a competent and independent supervisory body set up specifically for that purpose.

247. As regards the work done by patients in treatment centres, there are tasks for the institution and tasks forming part of occupational therapy. In both cases, patients receive what is called a "therapeutic incentive", which however is extremely low and insufficient to cover their own needs, much less those of their families.

248. There is a particular set of circumstances which arises with persons who are imprisoned for an offence or who have been detained in the course of a criminal procedure or investigation in which they are defendants and who then suffer an actual or suspected mental illness. In such cases the law states that the court or competent judicial authority may, on the basis of a medical report, order the person to be confined in a psychiatric institution.

249. In such cases, according to the ILANUD report, "there is no rehabilitation programme for these patients, and it seems that the purpose of their institutional confinement is limited solely to exercising social control over them." [25]

250. At present the authorities of the Manuel A. Chapui National Psychiatric Hospital and the authorities of the Ministry of Justice are negotiating to establish conditions under which a convicted person with a history of mental illness can be transferred to hospital.

Article 3

The right of asylum in Costa Rica

251. Between 1864 and 1865, the President of the Republic, Jesús Jiménez, and his chancellor Julián Volio upheld the granting of political asylum to General Gerardo Barrios, a Salvadorian soldier who had been overthrown. The achievement of Costa Rican politicians, who had to face the threat of invasion by armies from the other Central American countries, was regarded as the key element which made a small nation the land of choice for those suffering political persecution in America.

252. The right of asylum is fully guaranteed in article 31 of the Constitution, which states that "The territory of Costa Rica shall be an asylum for everyone persecuted for political reasons. If a person is ordered to be expelled on compelling legal grounds, he may not be sent to the country where he was persecuted.

Extradition shall be governed by Law or international treaty, and shall not take place for political or related offences, as defined by Costa Rica."

253. This constitutional safeguard is in accordance with the requirement in article 22 (7) of the American Convention on Human Rights, which states that "Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offences or related common crimes." Paragraph 8 of the same article states that "In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

254. The grant of asylum is a prerogative of the executive branch of government; it is a discretionary decision by the President and the Minister of Foreign Relations. The general guideline in granting asylum is to safeguard the physical integrity of a person in danger of losing his life, by contrast with those who seek to rely on this right in order to evade justice.

255. On this question, the jurisprudence of the Constitutional Chamber in its ruling No. 5462-92 of 21 September 1994, issued in Case No. 4842-C-93, was as follows:
".. Certainly the territory of Costa Rica will afford asylum to anyone persecuted for political reasons (article 31 of the Constitution) but neither that article nor article 41 implies a duty for the Executive to state the grounds for refusing asylum, since "aliens have the same duties and rights … as Costa Rican citizens, with the exceptions and restrictions established in the Constitution and the law" … and it is for the State of asylum to determine whether the case is an urgent one. Although it is not a question of the absence of legal rules in the matter, the discretionary power of the executive in this field is essential to the grant of asylum as part of

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[25] ILANUD and others, Derechos Humanos de las personas con enfermedades mentales en el sistema de salud de Costa Rica, San José, Costa Rica, 1997, page 44.

international relations, as recommended in the Constitution (article 140, paragraph 12), and accordingly, once asylum has been granted, it may only be rendered ineffective by way of due process."

256. In April 1998 the Government of the Republic, by decision No. 026-98 of 5 April 1998, granted asylum to Ms. Delia Revoredo, a Lawyer and university professor, a former magistrate of the Constitutional Court and President of the Board of Deans of the Republic of Peru. In addition, by decision No. 033-98 of 7 May 1998, political asylum was granted to Mr Jaime Mur, in his capacity as the husband of Ms Revoredo.

257. Among the reasons advanced by the petitioner to claim asylum were the following: that in May 1997 she was dismissed, together with two other magistrates, for complaining of irregularities to the Constitutional Chamber, which rendered unconstitutional the law which permitted the third election to the presidency of President Alberto Fujimori. She stated that she had been harassed by intelligence agents, who had partly destroyed a vehicle of hers in front of her house, had intercepted the telephones in her house and in the Deanery, and had attempted to assassinate the President of the Constitutional Court when his decision upheld hers. She had also been subjected to harassment and indiscriminate persecution by the Government.

258. In September 1998, during a visit by Ms Revoredo to her country, the Ministry of External Relations told her, in writing and at a meeting called for the purpose on 28 September, that there was an incompatibility in a person with asylum status going to his or her country of origin, without notifying the State which had granted asylum.

259. On 26 October 1998 Mr Mur and Ms Revoredo made a statement to the Legal Department of the Ministry of External Relations and Worship, concerning the need to go back to Peru for personal reasons.

260. On 27 October Mr Mur went to reside permanently in Peru, according to a report by his wife to the Legal Department of the Ministry of External Relations. On 30 October 1998 Ms Delia Revoredo informed the Ministry by letter of her intention to return to Peru, as did Mr Jaime Mur.

261. By decision No. 162-98 of 3 November 1998, published in Gaceta No. 239 of 9 December 1998, the executive withdrew the status of political asylum from Ms Delia Revoredo and Mr Jaime Mur Campoverde, in accordance with its authority under article 31 of the Constitution and the 1954 Caracas Convention on Political Asylum.

262. Another important case of political asylum was that of Mr Alvaro Leyva Durán, a Lawyer and economist of Colombian nationality, who was a former public official and a key figure in the peace negotiations in his country, with ties of confidence in the Colombian guerrilla movement, an ex-Minister, ex-deputy and member of the National Conciliation Commission. Mr Leyva is a public personage in Colombian politics.

263. The prosecutor's office in Colombia brought criminal charges for the offence of unjust enrichment against Alvaro Leyva in May 1998. Mr Leyva stated that the procedure against him was for a fabricated offence. In his defence, he brought sufficient evidence of the lack of substance to the charges, stating that the money he had received came from a Lawful business transaction and that his case indicated a large number of violations of due process, involving obvious prejudice on the part of the official responsible for gathering evidence,

omission of the evidence offered by the accused, and inconsistency in the weighing of evidence.

264. By a letter dated 12 August 1998 addressed to the Ministry of External Relations, Mr Alvaro Leyva sought political asylum from the Government of Costa Rica. In parallel with the asylum request, the Government of Colombia, through official channels, sent a request for his extradition to the Costa Rican authorities.

265. On this case, decision No. 6441-98 of the Constitutional Chamber of 4 September 1998 contained the following ruling: *"The Chamber takes the view that the final cancellation of the extradition - in the present state of affairs - prevents ad limine the minimum protection guaranteed in the Constitution for a person persecuted for political reasons, but it does not imply that for the sake of the Chamber protecting human rights, in the light of a maximum interpretation of the law of the Constitution, it may not recognize the existence of the essential content which applies directly to every claimant. Consequently, it must state that the legal institution of political asylum, as a constitutional right and therefore one of the highest, takes precedence over extradition, which is an instance of cooperation between States, and therefore no court dealing with a request for extradition may give a final answer to the requesting State, until the executive branch, through the Ministry of External Relations, has finally decided the question of asylum."*

266. The first circuit district court of San José, in a judgement of 17 September 1998, ordered protective measures for Alvaro Leyva, because of the extradition request from the Colombian Government. In its decision No. 145-98 of 8 October 1998, duly signed by the President of the Republic and the Minister of Foreign Relations, the executive also granted political asylum to Alvaro Leyva Durán, on the basis of article 31 of the Constitution and the 1954 Caracas Convention on Political Asylum.

267. The decision to grant political asylum was based on the following factors: in the past three years Mr Leyva had been engaged in seeking peace through dialogue for the Colombian people (this was proved through documentary and witness evidence); the political, humanitarian and negotiating activities undertaken by Mr Leyva in various peace projects had led to situations where his life and his family's lives were at risk; all his activities before leaving Colombia had been aimed at implementing a peace proposal for Colombia and carrying out campaigns in the country of President Pastrana.

Extradition

268. In the event of extradition and in the absence of bilateral treaties, the conditions for extradition, the procedure and the effects are governed by the Law on Extradition, No. 4795 of 16 July 1971, as amended.

269. The basic principle on extradition, as laid down in article 32 of the Constitution, is that "no Costa Rican may be compelled to abandon the national territory". The rule in article 32 is absolutely clear and conclusive, and in applying it there is no distinction between a Costa Rican by birth and by naturalization. This has been recognized by the Supreme Court of Justice in its finding that "In his status of naturalized Costa Rican, the appellant is protected by article 32 of the Constitution, which provides that without exception, Costa Rican citizens may not be compelled to leave the national territory. Thus the order to seize the appellant through the extradition machinery is unlawful and the remedy of Habeas corpus applies". (Supreme Court of Justice, session 6-2-84, article III).

270. In this sense, as the Constitutional Chamber has confirmed, in the light of article 32 of the Constitution it is not legally possible to extradite a Costa Rican citizen who is on the national territory.

271. The power to request, grant, offer or deny extradition lies with the judiciary, but its decisions are brought to the knowledge of the requesting or requested State, through the executive branch. According to article 3 (g) of the Law on Extradition, extradition will not be offered or granted if the offence is a political one or, even if it is an ordinary crime, is associated with a political offence under Costa Rican Law; h) in the case of the perpetrator of an ordinary crime, if the purpose of the extradition is political; I) when the offences for which extradition is sought would be punished by execution, except when the requesting State undertakes to impose the penalty immediately below this; when adequate certainty is lacking, the accused person will be tried by the Costa Rican courts on the basis of the documents furnished. Finally, extradition will not be granted when the accused person has the status of political asylum according to paragraph k).

Refusal of entry, deportation and expulsion

272. Chapter 8 of the General Law on Migration and Aliens governs the questions of deportation and expulsion.

273. Refusal of entry is the law whereby the competent authority, when carrying out immigration checks, refuses entry to the country to an alien and orders him or her to be sent immediately to the country of embarkation or origin or to a third country which will admit him.

274. The Law states that entry will be refused in the following circumstances: a) when the documentation necessary to authorize entry to the country is not presented; b) when one of the grounds for non-admission laid down in the statute is found to exist; c) when a person is found attempting to enter the national territory while evading immigration controls; d) when the person has been deported or expelled and has no re-entry permit issued by a competent authority, and e) when the person is on the list of undesirable persons held by the General Directorate, with a view to preventing their entry to the country.

275. Articles 118 and 119 govern deportation. Deportation is the law ordered by the immigration authorities whereby an alien in the following situations is put outside the borders of the national territory: a) illegal entry to the country; b) obtaining entry to or residence in the country with false documents; c) staying in the country outside the authorized place; d) staying in the country after a residence permit has been cancelled; e) when non-residents have their residence cancelled and have not left the country within the stipulated time limit.

276. In the case of deportations, appeals and requests for review of the decision of the Director General may be made only in the three latter cases. A request for review or appeal must be submitted to the Directorate General within five working days of the decision being notified, together with any relevant evidence. The appeal must be decided by the Directorate within a maximum period of 30 days from the date of receipt. After that the appeal will be deemed to be dismissed.

277. If an ancillary request for review has been lodged, it will be forwarded immediately to the Minister of Public Security, Governance and Police for consideration and decision. In that case, if the appeal has been rejected, the Directorate General will admit the request for

review and require the appellant to appear before the Minister within three days to argue his case. In the event of an appeal the Minister of Public Security will decide the appeal within a maximum time limit of 15 working days, reckoned from receipt of the file.

278. A decision to deport aliens can only be made on grounds specifically provided by law. It is made not in the form of a "numerus apertus" but as a "numerus clausus", which gives the alien greater legal security. By this means he can ascertain that the reasons for his deportation are only those which the law allows, and are not based on suspicion or presumptions on the part of the immigration authorities.

279. Another restriction is found in article 82 of the Regulation appended to the General Law on Migration and Aliens, which states "An alien may not be deported to a country where he may be subjected to the death penalty or where his life may be at risk."

280. As for expulsion, this is an order issued by the Ministry of Governance and Police whereby a resident alien is required to leave the national territory within a fixed time limit. Article 121 of the General Law on Migration and Aliens governs the grounds for expulsion. It states as follows: "A ground for expulsion exists: a) when, regardless of the immigration status, it is considered that the presence of the alien is harmful or that his activities endanger national security or law and order. (The final sentence of this paragraph was deleted by a decision of the Constitutional Chamber, No. 1684-91 of 28 August 1991, made within proceedings for unconstitutionality, case 131-89); b) when the alien has been sentenced by the courts of Costa Rica to a term of imprisonment exceeding three years; c) when the alien does not fulfil the conditions for political asylum or for refugee status."

281. A person who is the subject of an expulsion order may appeal, at one level only, to the Third Chamber of the Supreme Court of Justice, thus an alien ordered to be expelled has a remedy. The Chamber must decide the case within eight working days following completion of the file.

282. In the case of both expulsion and deportation orders, until any appeal or review application has been heard, the effects of the order are suspended until the appeal authority has made its decision.

282. In the course of 1999, the Directorate of Migration and Aliens made orders against 43,077 persons, and in the first four months of this year 26,422, of various nationalities including the following: 4 from Colombia; 4 from Cuba; 16 from Ecuador; 9 from the United States; 5 from Haiti; 18 from India; 27 from Panama; 8 from Peru, and 24,294 from Nicaragua. [26]

284. Deportations to neighbouring countries during the period 1990-1999 were as follows

YEAR	NUMBER
1990	309
1991	840
1992	4,222
1993	13,434
1994	33,905
1995	57,573
1996	62,146

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[26] *"Más tráfico de ilegales"*, Periódico La Nación, Friday 2 June 2000, Crime reports, page 10A.

1997	22,671
1998	58,400
1999	43,077
TOTAL	296,577

Source: Dirección General de Migración y Extranjería,
Departamento de Planificación.

285. As for deportations carried out by the General Directorate for Migration and Aliens, during 1999 there were 520 deportations, a considerable increase on the previous three years. The figures for 1990-1999 are as follows:

YEAR	NUMBER
1990	61
1991	169
1992	91
1993	109
1994	635
1995	1863
1996	2022
1997	63
1998	167
1999	520
TOTAL	5,700

Source: Dirección General de Migración y Extranjería,
Departamento de Planificación.

Expulsion of Venezuelan bank robbers

286. The most recent expulsion from Costa Rica took place in 1994, when in a controversial decision the Executive decided to expel a group of Venezuelan bank robbers. The facts in question go back to 1993, when a group of robbers consisting of four Venezuelan nationals, in a systematic and premeditated fashion, launched a series of violent and bloody attacks, resulting in the deaths of three persons and injuries to a number of others. These crimes were carried out mainly in banks in the capital.

287. In an intensive operation, on 28 May 1994 the attackers were arrested by members of the Judicial Investigation Department. Charges of unlawful conspiracy, aggravated homicide and aggravated robbery were laid against the instigators.

288. In a joint decision, the heads of the Ministries of Public Security, Justice and of the President's office, together with the then President of the Republic, José María Figueres, decided to expel the detainees on the ground of a state of necessity, namely "the grave and imminent danger" which the expelled persons represented for the country, taking into account their considerable criminal background, the threats received by officials of the Republic and persons connected with the case, and the fact that one of the leaders of the group was at liberty.

289. To carry out their decision, the authorities drew up a plan consisting of taking the detainees directly to the airport of Juan Santamaría, thus controverting the initial court order which was for them to be sent to Costa Rican prisons and for proceedings to take their course

from there. Finally, a military aircraft from the Venezuelan air force picked up the detainees and took them to a prison in that country.

290. As a consequence of the expulsion, several habeas corpus appeals were lodged, which were taken together and decided in the ruling No. 3626-94 of 21 July 1994 of the Constitutional Chamber, being the first case to examine the conduct of the officials concerned.

291. In the opinion of the highest constitutional authority, the law complained of resulted for the appellants, inter alia, in their rights being unwarrantably curtailed, since having entered the country in a regular manner, their departure should according to article 31 of the Constitution have been through the extradition procedure and not through an administrative expulsion, and there was also a denial of natural justice in removing them for trial from the jurisdiction to which they were subject.

292. In the matter of criminal jurisdiction, the Minister for the President's office was subsequently exculpated by the Third Criminal Court of San José, being found not to have committed any abuse of authority. The case against the Ministers of Justice and Public Security was abandoned and finally, by a decision of the Criminal Court of San José of 16 July 1999, the case against the then President of the Republic for abuse of authority was dismissed.

Article 4

293. Article 40 of the Constitution, as already explained, contains a prohibition against subjecting any person to cruel or degrading treatment or to an indefinite sentence or confiscation of property. Any statement elicited by violent means will be null and void.

294. Costa Rica jealously respects human rights, and this is reflected in a series of legislative measures which have been fully described. As well as the requirements of the Carta Magna, Costa Rica has signed and ratified a number of international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide, the Inter-American Convention on Human Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Inter-American Convention on Forced Disappearance of Persons, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the various recommendations of the United Nations setting guidelines for the conduct of law enforcement officials, and the Minimum Rules for the Treatment of Prisoners.

295. As an international instrument duly incorporated into the legal order, article 3 of the Code of Conduct for Law Enforcement Officials refers to the proportionality of the punishment. This prohibits the use of force by public officials responsible for the care and custody of those deprived of their liberty, except in cases where it is strictly necessary and to the extent required for the discharge of their functions.

296. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in principle no. 30, refers to the forms of punishment in prisons, which

must be defined in written laws or regulations. In this regard, the Regulation on the Rights and Duties of Persons Deprived of their Liberty clearly defines the kinds of misdemeanours and the sanctions which may be imposed on those deprived of their liberty, and the procedure to be followed in each case.

297. In the domestic arena, Costa Rica has an extensive range of legislation, including the Criminal Code, the General Law on Health, the Law on Equality of Opportunity for Persons with Disabilities, the General Law on Migration and Aliens, and the Regulation pertaining thereto; the Law on Constitutional Jurisdiction, and the Regulations for the operation of the Ministry of Justice and the Ministries of Public Security, Governance and Police.

298. As explained, the Legislative Assembly of Costa Rica is dealing with a draft law submitted by the deputies Rina Contreras and Sonia Picado to amend the Criminal Code by including an article 183 bis which will define the crime of torture.

299. There are also a number of official channels through which persons affected may complain, so that responsibility may be laid at the right door and any financial compensation obtained.

300. As confirmed in the report by the Embassy of the United States in its annual reports for the period 1995-2000, Costa Rica does not have any cases of political or extrajudicial disappearance, nor is it a policy of the State to violate human rights in any of their many aspects. On the contrary, Costa Rica is recognised internationally as one of the States where human rights are most respected in all their dimensions.

301. The annual report by the NGO Amnesty International for 1999-2000 does not include Costa Rica, which indicates a recognition that the human dignity of all who live in the country is fully respected.

302. In the same light, no cases of attempted torture, as defined in article 1 of the Convention, have been reported to the authorities. Attempt is defined in article 24 of the Criminal Code in the following terms: "Attempt is the initiation of commission of an offence, through laws directly aimed at its commission, which is not however achieved for reasons independent of the agent." Attempt is punished by the penalty laid down for the offence as committed, reduced or otherwise at the discretion of the court.

303. The Criminal Code also defines who is an accomplice, and article 74 states that "an accomplice shall be punished with the penalty laid down for the offence, which may be mitigated at the discretion of the Court."

304. According to the statistics kept by the Unit for All Offences of the Ministry, in the past two years the following complaints of abuse of authority have been made: in the first quarter of 1998, there were 151 complaints, of which 18 were dismissed for lack of jurisdiction; in the second quarter of 1998 there were 105 complaints, 17 being dismissed for lack of jurisdiction; in the third quarter of 1998, there were 59 complaints, 15 being dismissed for lack of jurisdiction; in the first quarter of 1999 there were 74 complaints, of which 2 were dismissed for lack of jurisdiction; in the second quarter of 1999 62 complaints of which 18 were dismissed for lack of jurisdiction; in the third quarter of 1999 there were 73 complaints of which 21 were dismissed for lack of jurisdiction; in the fourth quarter of 1999 there were 91 complaints of which 4 were dismissed for lack of jurisdiction, and in the first quarter of 2000, as of 21 February 61 cases had been submitted and 7 had been dismissed for lack of jurisdiction.

305. Complaints about deprivation of liberty in the same period were as follows: first quarter of 1998, 44; second quarter of 1998, 11; third quarter of 1998, 23; first quarter of 1999, 20; second quarter of 1999, 36; third quarter of 1999, 33; fourth quarter of 1999, 33 and first quarter of 2000, 16. Here it should be made clear that complaints about deprivation of liberty are not always directed against the police.

306. Costa Rican law does not prescribe any particular punishment for authorities which have taken part in laws of torture, nor does the Costa Rican prison system have any special section for persons convicted of this offence.

Application of the justice system to indigenous communities

307. Special circumstances apply to the autochthonous groups. The manner in which the State exercises control, and its consequences for the population in these groups, is important in itself. Enforcement entails the imposition of a sanction when a crime is committed; the ideal for every legal system is for its rules to be obeyed.

308. From the perspective of indigenous communities, the foundations of their own system are affected by whether these rules are binding or otherwise. It is necessary here to focus on the indigenous society and its customary law, and what actually happens when confronted with the reality of criminal law and the effects produced by a sanction.

309. Here we have a dilemma between a set of values which from time to time disrupt the daily hierarchy, being what criminal law systems claim to take effect "erga omnes" (for everyone). The question may be asked, are there any exceptions? It is difficult to give an answer, as this means understanding not one world, but several; in this case, that of a dominant society imposing its own legal system, and the indigenous system.

310. This situation occurs when an indigenous person is required to undergo a criminal procedure in which cultural models are imposed without discrimination, being completely different and often contradictory to his own. In this situation, indigenous peoples are defenceless before the workings of Western justice, being subject to limitations such as language, social prejudice and sometimes lack of understanding on the part of judges.

311. The report of the Office of the Ombudsman for 1999 notes that the main problem commented upon by the inhabitants of indigenous communities in relation to the justice system is the language barrier, which arises at the time when they lodge their complaints. "It is found that sometimes the standard of care is deficient, because their language is not understood, which effectively means they are denied the service. The lack of interpreters makes it impossible to gain access to justice in the required form and with the necessary despatch, and places the responsibility for making themselves understood on the users of the service rather than on those who are providing it."

312. "Because of the same problems of access to and size of the indigenous areas, there is an urgent need to overhaul the organization of the service provided to users, and machinery must be found to bring it close to the recipients, instead of obstructing access to justice by reason of remoteness, language and timetables. In this sense, the Office recommends reviewing the profile of judicial officials, in all their functions, so that even if it is not possible to maintain offices in all the relevant places, at least there could be regular visits to the communities in order to keep contact with the inhabitants."

313. Finally, the report describes an experience arising from a complaint about situations affecting access to justice for indigenous persons. In Talamanca, a rapprochement was achieved between the inhabitants and the judicial authorities, with a view to securing more diligent attention and coordinating joint activities with the community. There was an example of this in the prompt action by the internal revenue agent of Bribri, in the Talamanca area, who made a proposal to the Government Auditor to verify the destination of sums originating from the town council, which were originally intended for roads in the region, but which local people complained had not been properly spent.

314. Under Law No. 7316 of 3 November 1992, published in the official gazette La Gaceta No. 234 of 4 December 1992, Costa Rica ratified ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Articles 8 and 9 of this Convention call upon the official dispute resolution bodies to respect the methods which other communities may have internally. Echoing this international instrument, which has been duly incorporated into the legal order, there is a draft law before the Legislative Assembly entitled "Law on Autonomous Development of Aboriginal Peoples", which insists on recognition in the justice system of the effects of indigenous customary law, and promotes its codification for each community.

315. According to article 86 of the draft, "the customary law of the aboriginal reserves is recognized as a suppletive source of law, being compatible with the national legal order. The regular courts must apply aboriginal customary law when it is compatible with the national legal system, and failure to comply with this requirement on the part of the officials responsible for imparting justice will render their decisions null and void and will incur criminal responsibility."

316. At present, indigenous people who commit an offence are tried in accordance with national law, and the courts are bound to appoint an interpreter if they do not know the Spanish language. The aim of the draft law is to alter substantially the law on indigenous populations in Costa Rica, endeavouring to create methods to provide autochthonous peoples with a genuine response to their needs, in accordance with their particular characteristics and cultural values.

317. As part of this scheme for responding to the problems of the autochthonous peoples from a real life point of view, Executive Decree No. 13590-G of 6 May 1982 introduced a system of security guards for the indigenous reservations, appointed by the Institute for Agrarian Development. The Decree defines the tasks of these officers, equipping them in some cases with the Rural Assistance Brigades, and regulates the procedure for appointing them. It also provides that members of the Rural Assistance Brigades may only be appointed to security duties in the indigenous reservations in exceptional cases.

318. In practice, the indigenous reservation guards carry out a symbolic function within the 22 indigenous reservations; in most cases they do not carry firearms, only a baton and means of identification. They bear the heavy task of combating woodcutters and drug traffickers, which mans that the civil guard has to be constantly engaged in guarding the reservations.

319. With a view to establishing a specific system of security for the indigenous communities, the National Commission for Indigenous Affairs is preparing a draft plan, with the Ministry of Security, to take control of the indigenous guards, as contemplated in ILO Convention No. 169. This specialised security agency will be trained at the National Police Academy.

The case of "Commander Cobra"

320. The facts of this case go back to 1995, when a series of unlawful laws were committed in the indigenous area of Talamanca. Investigation showed that they had been committed by a group of volunteer rural guards.

321. The case against the 12 accused was for the offences of unlawful trespass, aggravated deprivation of liberty, corruption, rape, ordinary homicide and aggravated homicide. The decision of the lower court, confirmed by the Court of Cassation, acquitted some of the defendants from all responsibility for the offence of unlawful trespass and aggravated deprivation of liberty, and exempted them from payment of costs.

322. Others of the accused were acquitted of three charges of aggravated deprivation of liberty, and also exempted from payment of their own costs and the costs of the proceedings.

323. By comparison, those found guilty were sentenced to two years imprisonment for the offence of corruption; three years imprisonment for three offences of aggravated deprivation of liberty; eight years imprisonment for the offence of rape; five years imprisonment for the offence of violation; 12 years imprisonment for the offence of ordinary homicide, and 20 years imprisonment for the offence of aggravated homicide. [27]

324. Some agents were convicted of co-conspiracy, i.e., of being responsible for various offences, and were sentenced to a total of between 42 and 32 years imprisonment. However, in line with the present Criminal Code, the maximum penalty awarded was 25 years.

325. Several appeals for amparo were lodged against the sentences, presenting the following arguments:

326. The first appeal claimed non-observance of the rules for the appraisal of evidence and the principle of "in dubio pro reo". It pointed to the preliminary part of the judgement, which portrayed the appellant as being responsible for one of the rapes without sufficient proof, since not even the presumed victim had identified him during the proceedings.

327. The second appeal claimed a breach of the rules for the appraisal of evidence, non-observance of the principle of "in dubio pro reo" and argued that the defendant had never been part of the operation, and therefore article 192 (4) (no indication of the law or code) was misapplied in attributing to him three offences of aggravated deprivation of liberty.

328. In the third appeal, the defendant argued failure to observe articles 1, 106, 393 and 400, paragraph 4, of the Code of Criminal Procedure, which refer to the lack of foundation and the application of the principle of "in dubio pro reo", lack of foundation of the case, violation of the chain of custody of expert evidence, a basic conflict in the evaluation of testimony and medical opinion, a violation of the rules for the appraisal of evidence and absence of proof in describing the circumstantial evidence as "grave, precise, various and concordant".

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[27] The Criminal Code defines corruption in article 346, in these terms: "A term of imprisonment of two to eight years will be imposed on any public official who abuses his status or office to oblige or induce any person to give or to promise improperly, to himself or to a third person, any benefice or property". ZUÑIGA MORALES (Ulises), Código Penal concordado, Investigaciones Jurídicas, 5th edition, San José, 1997.

329. The fourth appeal was submitted by the Justice Department, claiming non-observance of article 192, paragraph 4, together with article 191 of the Criminal Code, since the elements of due obedience were lacking in the case and there had consequently been an erroneous application of article 36 of the Criminal Code.

330. In 1996 the Third Chamber of the Supreme Court of Justice, by its decision No. 672-F-96 of 8 November 1996, confirmed the order against the accused in all its respects, dismissing the appeals lodged by the accused and by the Justice Department.

Article 5

The law on jurisdiction

331. Article 5 of the Constitution defines the boundaries of the country, stating that "The national territory is comprised between the Caribbean Sea, the Pacific Ocean and the Republics of Nicaragua and Panama".

332. Article 6 also establishes the scope of jurisdiction: "The State exercises complete and exclusive sovereignty in the airspace of its territory, in its territorial waters to a distance of twelve miles from the low water mark off its coasts, on its continental shelf and in its inland plinth? In accordance with the principles of international Law. It also exercises special jurisdiction over the seas adjacent to its territory up to two hundred miles from the same baseline, in order to protect, conserve and exploit exclusively all the resources and natural riches found in the waters, the soil and the subsoil of these areas, in accordance with the same principles."

333. Criminal jurisdiction is defined in article 4 of the Criminal Code: "The Law of Costa Rica shall apply to anyone who commits a punishable law on the territory of the Republic, except where exceptions have been defined in the international treaties, conventions and rules accepted by Costa Rica. For the purposes of this provision, the territory of the Republic shall comprise, in addition to its natural or geographical territory, the territorial sea, the airspace above them and the continental shelf. The national territory shall also comprise Costa Rican ships and aircraft."

334. Article 5 of the Criminal Code governs extraterritoriality, stating that "the criminal Law of Costa Rica shall also apply to punishable laws committed abroad, wherever
a) they impugn the internal or external security of the State, or its economy,
b) they are committed against the public administration, by officials in its service, whether Costa Rican citizens or others."

335. Article 6 supplements article 5 by stating that "proceedings may be initiated for punishable laws committed abroad, and Costa Rican Law may apply to such cases, if:
a) they produce or may produce their results in whole or in part on the national territory;
b) they have been committed by persons in the service of Costa Rica and were not tried in the place where the law was committed, by virtue of diplomatic or functional immunity; and
c) they were perpetrated against a Costa Rican citizen or his dependants."

336. Article 7 contains a provision on international crimes. It states: "Regardless of the provisions applying in the place where the punishable law was committed and the nationality of the perpetrator, penalties under Costa Rican law will be awarded against persons who commit laws of piracy or genocide, who falsify coins, credit notes, banknotes or other bearer papers, take part in the trafficking of slaves, women or children; engage in traffic in narcotics

or obscene publications, or commit other punishable laws against the human rights specified in the treaties adhered to by Costa Rica or in this Code".

337. Article 8 makes provision for offences which may be prosecuted in Costa Rica, stating that "For the offences named in article 5 to be open to prosecution in Costa Rica, all that is required is action by the State. For the offences contemplated in articles 6 and 7, the offender must be on the national territory. For those in article 6, proceedings may commence when a charge is laid against the defendant; for those in article 7, criminal proceedings may only be instituted through a competent authority".

338. Article 9 states that "foreign criminal awards made for the offences specified in articles 4 and 5 shall not have the force of *res judicata*; however, the penalty or part penalty which the convicted person has discharged under such an award shall have credited to it the penalty which would be imposed under national law, if both are similar in kind; if not, the latter shall be moderated as appropriate".

339. Finally, article 10 of the Criminal Code states concerning foreign awards with the force of *res judicata* that "in the cases referred to in articles 6 and 7, the a foreign acquittal shall have the force of *res judicata* for all legal purposes. A conviction shall have the same force in all cases for the purposes of determining the phenomena of recidivism and habitual criminality".

340. The Law on Extradition stipulates in relation to the territorial aspect that this will not apply when: "b) the request for extradition is based on offences which were committed by persons who are being tried or punished in Costa Rica for the same laws, or when as a consequence of a proceeding in train to which this paragraph refers, they have been acquitted or pardoned or have discharged the penalty imposed; f) when the offence was not committed on the territory of the requesting State or did not produce its effects there."

341. As regards international conventions, Costa Rica has signed and ratified the United Nations Convention on the Law of the Sea, adopted into law through Law No. 7291 on 23 March 1992, published in Supplement No. 10, La Gaceta No. 134 of 15 July 1992 and in force for Costa Rica since 17 November 1994. In adopting this instrument, Costa Rica fully incorporated the international norms already accepted concerning the extension of the State's criminal jurisdiction to the seas adjacent to its coasts and prohibits the commission of offences degrading to humanity, such as transporting slaves.

342. By Law No. 5299 Costa Rica ratified the Convention for the Suppression of Unlawful Laws against the Safety of Civil Aviation, published in the official gazette La Gaceta No. 166 on 5 September 1973; this instrument ensures that offences committed on board an aircraft are punishable internationally. The purpose of the convention is to combat the illicit hijacking of aircraft. Article 1 states" 1.Any person commits an offence if he unlawfully and intentionally: a) performs an law of violence against a person on board an aircraft in flight if that law is likely to endanger the safety of that aircraft; or….. b) is an accomplice of a person who commits or attempts to commit any such offence."

343. The importance of this Convention lies in establishing genuinely international jurisdiction, which may lie: a) with the State of registration of the aircraft in question; b) with the State of landing, if the offender is still on board; c) at the domicile or head office of the operator of an aircraft hired without a crew; and finally d) with a State which refuses the extradition of the subject.

344. The Convention defines such an law committed on board as an extraditable offence, and although it does not provide for an automatic procedure, it adds strength to the prosecution of such an offence through the requirement that the offender be tried and the definition of the law as a grave one.

Article 6

Detention and extradition

345. For the purpose of detention with a view to extradition of a person presumed to have committed an offence of torture, Costa Rica relies on the legal provisions in its Constitution, its Criminal Code and the Law on Extradition, unless there is a bilateral extradition treaty.

346. The following extradition treaties have been signed and ratified to date: i) Treaty on extradition between the Government of Costa Rica and the Government of China, signed on 12 December 1984, approved on 26 July 1990 and published in the official gazette La Gaceta No. 160 on 27 August 1990; ii) Treaty on Extradition and Legal Assistance in Criminal Matters between the Government of Mexico and the Government of Costa Rica, Law No. 7146, approved on 20 December 1994, published in the official gazette La Gaceta No. 07 of 10 January 1995 and iii) Treaty on Extradition between Costa Rica and the Kingdom of Spain, signed in Madrid on 23 October 1997, Law No. 7766, approved on 24 April 1998, published in the official gazette La Gaceta on 20 May 1998.

347. Other extradition treaties in force are iv) the Central American Convention on Extradition , adopted in Washington, United States, on 2 July 1923, ratified by Costa Rica on 24 November 1924; v) Treaty on Extradition between Costa Rica and Colombia, Law No. 60 of 7 May 1928, vi) Treaty on Extradition between Costa Rica and Italy, Law No. 53 of 6 May 1873, and vii) Treaty on Extradition between the Government of Costa Rica and the Government of the United States of America, signed on 4 December 1982, Law No. 7146, approved on 30 April 1990, published in the official gazette La Gaceta No. 95 on 21 May 1990, supplemented by notes which were approved under Law No. 7260, approved on 9 October 1991, published in the official gazette La Gaceta No. 200 on 21 October 1991.

348. It should be noted that the Central American treaty on extradition and the bilateral extradition treaties with Colombia and the United States have one element in common, as regards the right to life, that they all exclude as a ground of extradition the application of the death penalty. In this sense, the Central American treaty provides in article II, paragraph 7, that extradition shall not take place: "When the penalty for the offence for which extradition is requested is death, unless the Government making the request undertakes to apply the penalty immediately inferior to it."

349. The Law on Extradition provides that when the courts, the Justice Department or the executive become aware that a foreign citizen is to be extradited, they shall inform the State or States concerned, through the Ministry of External Relations, so that if appropriate, the extradition request may be objected to within a time limit of two months.

350. When extradition is requested, the requested person must be brought before the criminal court of his place of residence, or if this cannot be ascertained, before a criminal court in San José. While extradition proceedings are going on, the person will be under preventive detention for a period of two months.

351. The requesting Government must present the following documents: I) documents attesting a warrant or writ for detention or imprisonment or, as appropriate, the final sentence awarded; ii) an authentic copy of a record of the proceedings supplying proof or at least reasonable indications of the guilt of the person concerned; iii) the identifying particulars of the suspect or guilty person; iv) an authentic copy of the legal provisions on the definition of the offence, the role attributed to the offender, the nature of the penalty applicable and of prescription. If the documentation is incomplete, the court will request the missing document or documents to be supplied through the most rapid channel.

352. Extradition may be requested through any means of communication, provided there is an order for the detention of the accused person and an undertaking to comply with the requirements of the proceeding. These documents must be sent to the appropriate courts or submitted to the Embassy or Consulate of Costa Rica, no later than 10 days from the date on which the accused person was detained, and must then immediately be despatched to the Costa Rican judicial authorities. If this is not done, the detained person will be set free, and his extradition may not be sought afresh through this summary procedure.

353. When all the documentation has been verified by the courts, the pre-trial person will be allotted a public defence counsel if he has none of his own, and a date for hearing up to 20 days later will be set for him and for the Justice Department, 10 days being allowed to obtain evidence and the remainder to supply it. Objections raised during the proceedings will be dealt with the court, which will reject any argument which is not relevant or which, in its judgement, tends to hold up the proceedings.

354. The court will make its decision, either granting or refusing extradition, within the 10 days following the procedure outlined above, and may attach to it such conditions as it deems appropriate. In order to supplement the guarantees afforded by the procedure, the court must request and obtain from the requesting country a formal promise that the extradited person will not be tried for a different prior law, or subjected to sanctions different from those corresponding to the law or imposed in the relevant judgement, a copy of which must be sent by the requesting country to the Costa Rican courts.

355. The decision ordering extradition may be appealed to the appropriate higher court within three days, which begin to run from the date of its being handed down. The court will give the parties a three-day hearing, after which it will issue the decision within the 15 following days. When extradition has been granted, the charged or guilty person will handed over to the police to be sent out of the country.

356. If extradition is refused, the person charged will remain at liberty, which will also be the case if the requesting State does not have the person at its disposal within two months of being asked to make a decision. If extradition is refused on the merits of the case, it may not be requested again for the same offence.

357. Concerning the two-month period, the Supreme Court of Justice, in dealing with habeas corpus requested, has ruled that if a decision admitting an extradition request extends by two months the provisional detention of the requested person, this is not an unlawful deprivation of liberty within the meaning of article 37 of the Constitution, since such a prolongation of the provisional detention is the physical means whereby extradition can be effected, within the two months of the court order to that effect being signed (ruling in part II of the special session of the full court on 8 October 1981).

358. Almost all extraditions which have taken place in the country in the past 20 years are associated with homicide, sexual offences, drug trafficking and money laundering. As explained, the courts of Costa Rica will only have jurisdiction if the offence is committed within the country; however, the great majority of persons concerned are detainees seeking to evade justice in their own country. In this case, the Costa Rican courts will order extradition if the extradition request complies with all the formal and substantive requirements.

The Koziy case

359. The Chancery office of Costa Rica has received an extradition petition from the World Jewish Congress relating to the Ukrainian national Bodan Kosic, a presumed Nazi war criminal, who is 78 years old and has been settled in Costa Rica since 1984. This request was also made in 1996 by a majority of members of the Israeli parliament.

360. Bohdan Koziy, married to Yaroslava Ostapiak Hudyma, was born in 1923 in the Ukrainian city of Pukasiwici. During the Second World War he was a member of the police force organized by the Nazis in Ukraine, to whom the deaths of hundreds of Jewish civilians were attributed. In his individual capacity, Koziy is accused of murdering a little girl aged 4, the daughter of a doctor named Singer, and of killing a Jewish family of the name of Kandler in the autumn of 1943.

361. After the end of the war, he managed to gain entry to the United States in 1949 and became a naturalized United States citizen. Having discovered that he had lied about his identity, in 1982 a Federal court in the state of Florida revoked his citizenship, but by the time he was due to be deported the authorities had lost track of him.

362. In 1986 the First Criminal Court of Alajuela, through a decision handed down on 11 December, refused a request from the USSR to extradite Koziy, on the basis that the crimes imputed to him were prescribed, by lapse of time, under Costa Rican Law.

363. Some months later, by decision No. 317 of 11 March 1987, the Higher Court of Alajuela set aside the previous judgement and declared the extradition request against Koziy admissible. The extradition was to take place within two months, and the Government of the requesting country, the USSR, was to provide the Government of Costa Rica, through the Ministry of External Relations, at its discretion, with an undertaking that in no circumstances would the death penalty be ordered.

364. The Court's findings included a criticism of the extradition request for being imprecise and lacking a clear legal basis, pointing out that although article 3 (D) of the Law on Extradition states that extradition shall not be offered or granted if the alleged law was not an office under Costa Rican Law or if criminal proceedings or a criminal penalty would be prescribed by lapse of time, in the light of the actual wording there can be no doubt that the intention of the lawmakers was that our law should be examined to ascertain whether the law was punishable or not, but as regards prescription it was the legislation of the requesting State which should govern. Our view is supported by paragraph 9 (4) of the rule in question, which requires the applicant to submit together with its request a certified copy of the legal provisions on prescription which apply in the requesting country, and this would be meaningless if it were not the foreign law which is taken to apply in such cases (prescription of criminal proceedings).

365. The judgement also stated that "in the view of the court, proceedings on Costa Rican territory are not morally unjustified, where they relate to conduct contrary to the democratic

tradition of the country, and in particular to respect for life, physical integrity and non-discrimination." [28]

366. It also has to be considered whether the offences in question would be prescribed under the Law of the USSR. On this point, the Court stated: "the Government of the requesting country has determined that crimes against humanity are imprescriptible, and has signed the Convention on the non-applicability of prescription to war crimes and crimes against humanity."

367. In a note verbale dated 1 April 1987, the Ambassador of the USSR in Costa Rica, acting on behalf of his Government, gave a formal undertaking that " ..the extradited person Bogdán Koziy will not be tried for any other previous law, and will not be subject to sanctions other than those for the laws relating to the indictment, and on the basis of which extradition was requested." He later added "..I formally undertake, on behalf of the Government which I represent, that in the hypothetical event of the subject Koziy being condemned to the death penalty, it will not be imposed."

368. By its communication No. 227-87 of 6 April 1987, the Minister of External Affairs, Rodrigo Madrigal Nieto, asked the Public Prosecutor of the Republic to state his official view on the explanatory preamble to the judgement No. 317 of 11 March 1987 of the Higher Court of Alajuela.

369. The Public Prosecutor, Fernando Solano Carrera, replied to the communication No. 227-87 by a statement No. C-074-87 dated 7 April 1987, setting out the following conclusion: "… my opinion is that the Minister of External Relations and Worship is not competent to make a value judgement concerning any guarantee which the Government of the USSR may offer with regard to the possible imposition of the death penalty on the extradited person Koziy Bogdan Ivanovich."

370. The Public Prosecutor continued by saying that ".. the study I have made of this and other recent cases shows that judicial practice runs counter to the language and purpose of the Law on Extradition, so that I believe it would be right for the Executive respectfully to address the judiciary in this matter, but it might also be deemed necessary to undertake a legal reform, since this is a very delicate subject which deserves the attention of the Government."

371. By a note verbale, No. 228-87 of 9 April 1987, the Minister of External Relations and Worship communicated with the Ambassador of the USSR, to the effect that according to the finding of the Public Prosecutor, No. 07-87 of 7 April, "in extradition proceedings, the Executive is merely an intermediary between the requesting and the requested States. For this reason, it cannot law outside the limits of the authority conferred on it by the Constitution and the law."

372. The presiding judge of the first criminal court of Alajuela, through an official letter No. 197 of 5 May 1987 addressed to the Minister for External Relations and Worship, asked to be assured that the Russian Government had presented the guarantee to which the judgement of 11 March 1987 referred.

373. In these circumstances, the First Criminal Court of Alajuela, in a decision dated 10 June 1987, resolved that "..as the condition imposed by the judgement of the Higher Court has not

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[28] "Empezó extradición de Koziy", La República, Friday 25 February 2000, national news section, page 6 A.

been fulfilled within the time limit of two months from the detention of the subject, this judgement cannot and must not be executed, and the subject of the extradition procedure must be set free (article 11 of the Law on Extradition)".

374. In 1996, a group of United States members of Congress of Jewish descent requested the then President of the Republic, José María Figueres, to extradite Kosiy; however, the then Secretary of State, Dr. Fernando Naranjo, stated that "Costa Rica will not carry out a unilateral extradition".

375. As no country had formally requested Koziy's extradition, the Ministry of Public Security, Governance and Police, on 24 February 2000, made an order for the Ukrainian to be expelled.

376. By June 2000 it was not possible to execute the order, since Mr Koziy appealed the decision claiming it was null and void for lack of proper notice. That claim was not upheld, and a group of lawyers is now studying the evidence presented by Mr Koziy in his defence, in order to make a final administrative recommendation to the Minister of Security on whether he should be allowed to remain in the country. If the expulsion order is upheld, he will be given 24 hours to appeal the decision before the third chamber of the Supreme Court of Justice.

Article 7

377. Article 3 (a) of the Law on Extradition, supplementing the provision in the preceding article, states that extradition is not to be offered or granted "if at the time the punishable offence was committed Costa Rican citizenship, by birth or naturalization, was claimed." In such cases, the defendant has to be tried by the Costa Rican courts.

378. Decision 6780-94 of the Constitutional Chamber of 22 November 1994 provides that "To declare the action admissible and consequently, to find unconstitutional the judicial interpretation of article 3 (a) of the Law on Extradition, in the sense of granting extradition in the case of a Costa Rican citizen by naturalization subsequent to the punishable law for which it is requested, should be interpreted as meaning that this possibility would only exist if the subject of the extradition loses Costa Rican nationality."

379. The Law on Extradition stipulates that extradition is not to take place if the request is based on offences committed by persons who are being tried or punished in Costa Rica for the same laws, or when as a consequence of the initiation of proceedings they were acquitted, pardoned, had the sentence commuted or had already discharged the penalty. Nor will it be allowed if the subject is being tried or has been convicted of offences or of fraud committed in the Republic before the request for extradition was received; however, if he is acquitted or the penalty imposed is discharged, extradition may be ordered.

380. Extradition will not take place if the alleged offence was not an offence under Costa Rican Law, or was prescribed; or if the penalty for the laws alleged to warrant extradition is less than one year's deprivation of freedom and if preventive imprisonment or detention is authorized or granted, pending a final judgement. The sentence must be one of deprivation of freedom.

381. Other grounds for refusing extradition are: when the offence was not committed or did not produce its effects on the territory of the requesting State; when the offence is a political one or, if an ordinary crime, was associated with a political offence, under Costa Rican Law;

when the person concerned is the perpetrator of an ordinary crime, if the purpose of extradition is based on political reasons; when the offences for which extradition is requested are punished by the death penalty, unless the requesting State undertakes to impose the penalty immediately inferior to this. If this assurance is not obtained, the subject will be tried by our courts on the basis of such documentation as is provided; when the accused person would have to appear before a court of extraordinary jurisdiction in the requesting State; and finally, when the accused person has protected status by virtue of obtaining political asylum.

382. Extradition will not be allowed in any of these circumstances, and if the Costa Rican courts decide that the subject is to be tried within the country, proceedings against him will follow the domestic rules, with the procedural guarantees and remedies allowed by Costa Rican law.

383. To date, the country has not found itself obliged to try a person accused of committing laws of torture, although complaints have been made of abuse of authority, as in the above-mentioned case of "Commando Cobra". However, the procedural rules are very clear. Notwithstanding the gravity of the laws, the accused person enjoys all the procedural rights laid down by the criminal Law of Costa Rica. He or she may also apply to the Constitutional Chamber for habeas corpus or amparo if of the view that his or her rights have been infringed or that due process as defined in article 39 of the Constitution has not been followed.

Article 8

384. The law in force in Costa Rica is Law No. 4795 of 16 July 1971, entitled the "Law on extradition", which has been amended by the Laws No. 5497 of 21 March 1974 and No. 5591 of 9 November 1976.

385. The Law provides that Costa Rican citizens may not be extradited; nor may persons who although aliens, are being tried in Costa Rica for the same offences as those committed abroad; that extradition will not be permitted when the alleged law is not an offence under Costa Rican Law; when the complainant has been tried or convicted of a crime or misdemeanour committed in Costa Rica prior to receipt of the extradition request; when the penalty awarded for the alleged laws is less than one year's deprivation of liberty; when the offence was not committed on the territory of the requesting State; when the offence is political or, if an ordinary crime, the object is the death penalty; when the accused person would have to appear before an ad hoc tribunal or has received amparo protection through asylum status.

386. The Law on Extradition applies where there are no bilateral or multilateral treaties in force. Article 1 of the Law states: "in the absence of treaties, both the conditions and the procedure and effects of extradition will be determined in accordance with this Law, which shall also apply to the aspects which have not been covered by treaties."

387. According to the case law of the Constitutional Chamber, in its decision No. 6766-94, "the Constitution provides that extradition is to be governed by the law or by international treaties, so that no choice may be made between them, but this is to be left to the discretion of the appropriate organs of the State, because in Costa Rica there is a passive notion that the ordinary law on extradition is applied to a particular case, without reference to the treaty signed with the State of which the requested person is a national".

388. The promulgation of the law on extradition has made it possible to regulate the procedure and the effects of extradition with States with which there was no bilateral

agreement. The law represents a suppletive source for all agreements in which the rules are unclear or aspects of extradition are not covered.

389. The grant of extradition is an law of judicial appraisal. It is for the judicial authority to weigh up the circumstances and decide whether extradition should take place. In this context, article 5 of the Law is categorical in stating that the power to request, grant, offer or refuse extradition lies with the judiciary. This article goes on to say that it is for the executive to communicate the judicial decision made by the requesting or requested State.

390. As an example of the rules contained in these bilateral instruments, the extradition treaty between Costa Rica and the United States enshrines a number of concepts reflecting the new demands of contemporary society and the modern criminal law. This instrument describes in very general terms the offences which give rise to extradition, including the characteristics they must have, and provides that penalty immediately inferior to the death penalty must be awarded if either of the Parties punishes the offence with the death penalty, and also that the requested State may refuse the extradition. Other legal principles are mentioned such as non bis in idem (nobody may be tried twice for the same offence), the ban on extraditing nationals, the rule on special tribunals and simplified extradition.

391. In addition, the Inter-American Convention on Extradition, signed in Caracas, Venezuela, on 25 February 1981, is now before the Special Commission on International Affairs of the Legislative Assembly of Costa Rica. This Convention was submitted to the legislature on 18 May 1999, and published in Bulletin No. 47 of the official gazette La Gaceta on 28 June 1999. As of the date of submission of this report, it is item 23 of the agenda of the Commission. It should be pointed out that the importance of this instrument lies in the option it offers of bringing together the conditions for extraditing accused persons, which will help to facilitate the procedures involved and consolidate a uniform procedure.

Recent extradition cases

392. In the course of 1999 Interpol, together with the Judicial Investigation Department (OIJ) arrested six fugitives, and in the past four years about 40 persons sought abroad for crimes have been caught. The great majority of these were extradited to their countries of origin for trial.

393. The most recent cases of persons extradited for trial are the following:

394. On 30 January 1996 the United States citizen Stephen Lloyd Chula, accused of drug trafficking, was arrested in Guanacaste. On 11 June of the same year he was extradited to the United States.

395. On 7 March 1997 Roland Campbell, facing 32 charges of drug trafficking, bank raids, homicide and other offences, was extradited to the United States. He was arrested on 30 July 1996 in San José.

396. On 13 February 1998 Jorgina María de Freitas was extradited to Brazil, her own country, where she had been sentenced to 12 years imprisonment for the theft of $112 million from the National Social Security Institute.

397. Carlos Miranda, a United States citizen of Cuban origin, was extradited to the United States. A refugee from justice, he was being sought by Interpol for a crime by his wife in 1994. He was arrested by the OIJ and extradited to stand trial in the United States.

398. Another recent case of extradition concerned the Swedish citizen Tony Olsson, who was extradited to Sweden. Olsson was arrested in Alajuela, the country's second city, in the company of his mother, having fled his own country. He had been linked to a raid on a bank, in which two policemen had died, the reason why he had fled the country. His presence in Costa Rica was detected through Interpol, which immediately requested the cooperation of the national authorities in catching him. Once he had been caught, the interested parties - defence counsel, the Public Prosecutor's office, the Swedish Consulate and the Justice Department - were informed. The extradition was granted by the Criminal Court of San José - in Sweden, capital punishment has been abolished - and a few days afterwards Mr Olsson was sent to his country accompanied by Swedish security agents who had come to Costa Rica to take him back.

399. The procedure followed by the Costa Rican police authorities, according to the Swedish Consul in Costa Rica, Mr Francisco Font Ulloa, conformed at all times with full respect for human rights. The Consulate's statement was made before the arrest through the press and his Government, which had reported Mr Olsson's flight to Costa Rica. During his stay in prison, Mr Olsson was kept in a shared cell, but enjoyed special attention from the police, who gave him a telephone to communicate with his consulate; this ensured that he was not adversely affected by the language barrier. The Consulate also provided him with articles of personal hygiene. Once he had been transferred to the airport, the judge read him the extradition decision, translated by his consular representative, and all his personal property was returned to him.

Grounds for deportation and expulsion

400. Returning to the concepts enshrined in article 3, it is noted that Costa Rican Law distinguishes between deportation, expulsion and other similar measures. Deportation is governed by articles 118 and 119 of the General Law on Migration and Aliens, stating that this is a procedure ordered by the competent immigration authority, to place outside the national territory an alien in any of the following situations: a) having entered the country clandestinely or without complying with the rules governing entry or admission; b) having obtained entry or permission to remain in the country by making false statements or presenting false documents; c) remaining in the country beyond the authorized time limit; d) remaining in the national territory after the residence permit has been cancelled, and e) when non-residents have their residence permit cancelled and have not left the country within the time limit set.

401. The deportation of aliens may only take place on grounds specifically named in Law; the statement of grounds is regarded as a "numerus clausus", not a "numerus apertus". This gives greater legal security to an alien, who is able to determine that the reasons for deporting him are only those provided in law, not some reason based on suspicion or conjecture on the part of the immigration authorities.

402. There is a further restriction in article 82 of the Regulation on the General Law on Migration and Aliens, which states: "There shall be no deportation of an alien to a country in which he could be subject to the death penalty or where his life would be at immediate risk."

403. Article 120 and 121 also provide that the Minister of Security and Governance has to order the expulsion, which is to be to the country of origin or to a third country in the following cases:

a) When, regardless of the alien's immigration status, it is considered that his presence is harmful or that his activities endanger national security or law and order; (a decision by the Constitutional Chamber, No. 168491 of 28 August 1991, made within proceedings for unconstitutionality, file number 131-89, deleted the last sentence of this paragraph because of the vagueness of the terms "security" and "law and order". In its decision the Chamber dismissed an action for the whole of the article to be declared unconstitutional, considering it to be fully in accordance with the Constitutional and with international law).

b) When an alien has been sentenced by the courts of Costa Rica to a term of imprisonment exceeding three years;

c) when the alien does not fulfil the conditions for political asylum or refugee status." [29]

404. The decision to order a deportation carries with it the possibility of an action to set it aside, or to appeal. The action to set an order aside is submitted to the Directorate for Migration and Aliens within five working days of the original order, and must be settled within 30 days of the order. If it fails, an appeal may be lodged with the Minister for Security, who must decide it within 15 working days of receipt of the file.

405. When an expulsion is ordered, the person concerned is entitled to appeal at one level only, the Third Chamber of the Supreme Court of Justice. When an order for deportation or expulsion is pending, as long as no decision has been made on an appeal or action for annulment, the effects of the order are suspended until the appeal jurisdiction has made its decision.

406. The General Law on Migration and Aliens does not prescribe any set time limit for leaving the country. However, the case law of the Constitutional Chamber has decided by analogy that detention and transfer must be "for the period strictly necessary". Once deportation or expulsion has been decided upon, the individual is furnished with a copy of the order through his consulate, and is immediately transferred with all his property to the frontier or to the port of embarkation. In the case of the Swede Olsson, and that of the United States citizen Carlos Miranda, they were kept in the Reception Centre at San Sebastián until all the documents had been submitted by the Swedish and United States authorities, and the requests made by the judicial bodies. Mr Olsson was held for 10 days and was then transferred by a special flight to his country, whereas Mr Miranda was transferred to the United States in the custody of FBI agents.

407. No expulsions have taken place in the country since 1994, at which time, as previously explained, the executive authorities decided to expel four Venezuelan bank robbers, because of the danger posed by their remaining in the country.

Article 9

Ratified instruments on mutual legal assistance

408. Costa Rica has ratified two treaties on legal assistance. The first of these, the Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, was adopted through Law No. 7696. The purpose of the Treaty, signed on 20 October 1993 in San José, Costa Rica, is to create a legal framework for the provision of mutual assistance in the criminal cases arising in their

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[29] Ley General de Migración y Extranjería y su Reglamento, San José, Costa Rica, Imprenta Nacional, 1994, page 18.

respective jurisdictions. This Treaty was approved on 3 October 1997 and published in the official gazette La Gaceta No. 209 on 30 October 1997.

409. The terms of the Treaty confine assistance to ancillary aspects of the procedure: receiving testimony, obtaining and executing means of proof, notifying judicial decisions and other documents emanating from a competent authority, executing cautionary measures and locating individuals.

410. A draft Law on judicial assistance between Costa Rica and Paraguay, registered as number 13,548, is now in the legislative process. It is presently on the agenda of the Special Commission on International Affairs.

411. In this assistance treaty the States undertake to assume the sovereign duty of dispensing justice, and this is reflected in the exceptions listed: it does not apply in fiscal or tax matters, or to the detention of persons for the purpose of extradition, or to the transfer of criminal proceedings, the transfer of convicted persons to serve a criminal sentence, or the serving in the requested State of criminal sentences awarded in the requesting State.

412. The other treaty on mutual legal assistance is the "Treaty on Extradition and Mutual Legal Assistance in Criminal Matters between the Government of Costa Rica and the Government of the United States of Mexico". It was ratified through Law No. 7469, approved on 20 December 1994, and published in the Official Gazette La Gaceta no. 07 on 10 January 1995.

413. This treaty states that assistance is effected in the investigation and procedural stages of any criminal case initiated for laws falling to the requesting party to deal with at the time when assistance is requested. Exceptions under the Treaty are contraventions or minor offences, political offences, persons subject to the jurisdiction of the military courts and cases in which compliance with the request is deemed likely to undermine public order.

414. As regards judicial assistance and cooperation, the Code of Criminal Procedure stipulates, in article 65, that the Justice Department, as the agency responsible for criminal proceedings, may set up investigating teams with national or international institutions when Costa Rican legislation has to be applied to illicit activities which are being carried on, in whole or in part, outside the national territory, or are attributed to persons linked to an organization of a regional or international nature.

415. The procedure employed to capture international criminals begins with a request from the country seeking the fugitive. These requests are transmitted through the International Criminal Police Organization (Interpol), with its headquarters in France, the United States Drug Enforcement Agency (DEA) or the Federal Investigation Bureau (FBI) of the United States. When the judge makes the arrest order, the Judicial Investigation Department (OIJ), together with the Department of Intelligence and National Security (DIS), proceed to make the arrest.

416. In Costa Rica, with the exception of the Kosiy case, there have not been any registered cases of pre-trial persons being arrested for laws of torture, but as with the recent detentions of international criminals, the country's investigative and judicial authorities are quite ready to offer their services to help in bringing to trial those guilty of laws of torture or cruel or inhuman treatment.

417. This willingness on the part of the authorities to combat international crime is reflected in the article published on 15 August 1999 in the local newspaper La Nación under the title "Prófugos en la mira" (Fugitives in sight), which shows that in the first eight months of that year a total of 10 fugitives were apprehended, eight of whom were United States citizens, one a Dane and one a Swede, the one already mentioned.

Article 10

Training for public officials

The prison training academy

418. Training for prison officers is directed towards the following: security agents and officials, security inspectors, and security supervisors. These officers receive a course of training lasting three months, with a total of 300 hours of instruction. These courses are given in two modes: in class and through tutorials. The class mode is residential and lasts three weeks, and the tutorial mode is based on a collection of set texts. Each month a group of 30 students are received at the Academy for a class module lasting three weeks. They take a combined examination and for nine weeks receive tutorial support, ending with an oral examination.

419. The National Training Academy for Prison Officers operates within the ambit of the Ministry of Justice. It provides a basic course for police working in the prison system, with the general purpose of ensuring that staff acquire the basic theoretical and practical knowledge to fulfil their functions with efficiency and competence, through a process of integrated training, in accordance with the requirements of their specific jobs in the penal centres of the Costa Rican prison system.

420. The curriculum for the course includes five modules. The propedeutic model contains the technical study materials; the humanistic module includes the subjects : national life and the prison system, minimum rules and other UN guidelines for the care of persons deprived of their liberty, and ethics. The legal module covers the subjects Constitution and Human Rights and rules of the General Law on Policing and the Regulations for Policing in the Criminal Justice System. The prison module contains six subjects: the prison as an institution and the person deprived of liberty, the Plan of Institutional Development, prison security and its function, elements for observation and information techniques, preventive security techniques in prisons and discipline in the prison context. The last module is administrative, covering the subjects on internal and external control systems.

421. Training also includes specialized courses in the form of day-long workshops, round tables and lectures in the prison system, programmed each year for a total of 10 courses each lasting 40 hours, and designed for security personnel, official agents, inspectors and supervisors.

422. As part of the organized effort on the part of the prison authorities to offer better training to the staff, the National Academy for Prison Officers, in conjunction with the Inter-American Institute of Human Rights and the non-governmental organization Penal Reform International, are devising a project to establish a Master's degree in human rights within the prison system.

423. For the security personnel working in the Zurquí Juvenile Training Centre, specialist training courses have also been provided, such as the one given in February 2000 on the subject of "handling operational groups".

424. The teaching staff of the training academy for prison officers consists of professionals with a sound academic training and a long track record in the prison system. Each month sees the start of a basic course, of which there are 10 each year, whereas the specialized courses take place once a month for 10 months. The subjects are the same for men and women officers.

425. The Government of Costa Rica is respectful and conscious of the situation of men and women deprived of their liberty in the framework of the Law, and of the undertaking to strengthen human rights. Despite the economic difficulties, significant efforts are being made to comply with agreed international standards and parameters. As part of this institutional effort and of the institutional planning, from the year 2000 a 12-month course will be launched, taking place in the first week of every month, on human rights in the prison system, specifically in order to acquaint and familiarize the staff with the Standard Minimum Rules for the Treatment of Prisoners and the other recommendations of the United Nations in the field of criminal justice.

426. According to the General Law on the Police and the regulations accompanying it, in order to enter upon a career as a prison police officer one must have successfully completed the ninth year of general basic education. The training centre is in San José.

427. As regards the training of female security staff, their duties and the small numbers involved have so far prevented special provision being made for them; they attend the basic courses made available at the centres, but these do not allow for fewer than three officers attending.

428. The process of selection and recruitment of staff for juvenile penal centres involves features highly specific to the type of population involved, generally consisting of young people with few economic resources, coming from broken families, with a history of violence, incomplete schooling, low self-control and undergoing a process of development and maturation. To ensure adequate provision, both the technical and the security staff working in these centres have training areas available and hold regular discussion meetings.

Training for the Civil Guard

429. The programme of training for other police units, such as the Civil Guard, includes arrest and immobilization techniques when handling detainees, in accordance with the provisions of international instruments. The National Police Academy has a group of regular instructors including Lawyers, psychologists and security professionals. The basic level of education required to join the Civil Guard is completion of the sixth grade of primary education; however, the tendency is to increase the number of certified officers, who require at least successful completion of the third year of secondary education.

430. In the case of policewomen, they receive the same education as men, with the specific allowances made for their sex. At the National Police Academy, women have an office where they can leave their belongings at all times along with complaints and suggestions.

431. As for refresher courses for police officers, these are given from time to time, on subjects relating to social values and humane treatment; however, the authorities are aware

that they are still in the early stages. Students at the National Police Academy who are currently under training do receive regular instruction in these areas.

The Judicial Investigation Department

432. To work for the Judicial Investigation Department, one must have completed at least the full range of secondary education (the secondary school leaving certificate) and have passed the Basic Course in Criminal Investigation.

433. Newly-recruited investigative staff, both men and women, must receive training in the Basic Criminal Investigation Programme, which comprises 800 hours and includes the following subjects: the constitution, human rights, criminal law, criminal procedure, the law on minors, the Organic Law of the Judicial Investigation Department, the use of force by the police, the use and handling of the police information system, discipline, motivation, policing agencies, ethics, the where's where of the judicial system, human motivation and human relations, abnormal psychology, witness psychology, sociology, domestic violence, victim support, community relations, public information, handling stress, forensic biology, body fluids, fingerprinting, toxicology, drug abuse, amphetamines, acetates, ballistics, the switching of gun numbers, traffic offences, documentation, fingerprinting, anatomy and physiology, forensic medicine, investigation procedures, assault, robbery and theft, vehicle theft, drugs, economic crime, offences against life, negotiation, what to do at the scene of the crime, photography, planimetry, identification techniques, physical conditioning, personal defence, pistols, revolvers, shotguns, first aid, report writing, radiocommunications and role-plays.

434. When the basic course has been completed, the participant is assigned to a police unit within the country. He or she will continue training for 563 hours, but in what is called the Field Training Programme (PCAC), under the personal tuition of a field instructor who has undergone prior training and preparation for this type of in situ instruction.

435. Supplementing the basic preparation, the Judicial Police undergoes ongoing training through updating courses, specialized, supplementary and advanced course, according to their chosen investigative speciality.

436. Some examples of academic activity in which they participate are courses in advanced crime scene management, advanced criminal administration procedures, vehicle theft investigation, assembly and disassembly of motor vehicles (to ascertain manufacturers' numbers for the various parts of the car), police management (for the middle and higher ranks of the organization), administration and supervision (for the lower ranks), PR-24 advanced?, semiautomatic pistols, 12-bore firearms (all subject to use only in exceptional cases and only to defend oneself or third parties), confiscation of vehicles and criminal analysis, among others.

437. As for the treatment of detainees, the Judicial Police receive broad training from professional instructors (judges and prosecutors) in constitutional Law, the use of force, personal defence and the use of firearms; the approach to the latter two is defence and never attack, on the basis that the physical and psychological integrity of individuals is worthy of the fullest respect.

438. Moreover, in order to achieve full professionalism among the members of the Judicial Investigation Department, the Judicial College is working on redesigning the courses given to the Judicial Police to adapt them to national realities, and since 1993 an agreement has

been in force with the National Distance Learning College to enable investigators to train for a professional career in criminology.

439. It is essential to repeat that the training of the police force has always been governed and guided by the principles of Law and respect for human dignity, in a perspective of professionalization of each of the component parts of the organization. The topic of human rights is not only an integral part of the training process; it is an important element in itself, and one which has always been a compulsory subject taught by professionals in this field, both from the national defence counsel system and from the Inter-American Institute of Human Rights. As well as the material used in the classes, it is compulsory to consult the United Nations Manual on Human Rights Training for the Police.

Training for the Municipal Police

440. As for the training given to the Municipal Police, as already explained in article 2, in the case of the San José municipal police, entrants must pass a basic course of police instruction lasting 96 hours before initial appointment. Later, when already working, they follow an in-service course of practical training supplemented by talks, lectures, workshops and seminars on various topics.

441. In the case of the municipal police of Alajuela, the officers receive the same training as those in the police force of San José, thanks to an agreement between the two municipal authorities. Municipal staff also take part in seminars given by the Office of the Public Prosecutor, in which the main topic is proper treatment of human beings and the protection to be afforded to them, including those who have infringed public order.

442. The Municipal Police of Belén de Heredia trains its officers for a period of three months at the National Police Academy. The curriculum includes the following subjects: interpersonal relations, courtesy and discipline, weapons, safety of installations, compiling documents, police procedures and intervention, police ethics, personal defence, fighting drugs, road safety training, first aid, control of buildings, location techniques, human rights, police Law, municipal legislation, the State and society, and physical conditioning. In coming months they will also be given classes in computing and English.

Cooperation among international bodies and non-governmental organizations in the training of police forces

443. In Costa Rica, non-governmental organizations do not collaborate directly in instructing the police. However, the public universities such as the National Distance Learning College (UNED), the University College of Cartago and the private university Universidad Libre de Costa Rica, offer within their course provision some courses connected with the training of professionals in this field. In the case of international institutions such as the University for Peace, ILANUD or UNDP, they give their services in the theoretical sphere, through talks and meetings.

444. The Municipal Police of San José works closely with organizations such as the Arias Foundation for Peace and Human Progress, the non-governmental organization Defence of Children (DIN), the National Children's Council, the Ministry of Justice and the Inter-American Institute of Human Rights.

445. In the particular case of the Free University of Costa Rica, there is a bachelor's degree course in criminology. The course is arranged in eight four-month terms, and is specifically intended to offer students theoretical and philosophical knowledge of criminology as a science, with the aim of enabling them to identify the purpose and objectives of imprisonment and gain a personal understanding of crime, the offender, the victim and social controls.

446. The University College of Cartago offers a diploma in criminology, with a plan of study arranged in three four-month terms of basic education dealing with subjects such as the fundamentals of chemistry and physics, first aid, an introduction to criminology, crime detection and the right of self-defence, criminal sociology, criminal investigation procedures, criminal Law and corporate security. There are also two special subjects, crime investigation and corporate security, each covering three four-month periods.

447. The National Distance Learning College (UNED) offers a bachelor's degree in criminological science, aimed at "the acquisition by the student of knowledge in the area of the criminal sciences, enabling them to study phenomena which have traditionally been treated in isolation from one another. Through this course the public University, drawing upon its teaching force and professional investigators and advisors, will focus on solving the socio-political problems of criminality". [30]

Training for forensic experts

448. It is essential to note that in Costa Rica no laboratory exists to experiment in ways abusive of human dignity. On the contrary, its scientific research centres are at the service of social welfare.

449. The judiciary in Costa Rica, through the Judicial Investigation Department and the Department of Forensic Medicine, offers instruction for the police, the judicial authorities, medical students, Law students and legal personnel, providing preventive education on torture of persons deprived of their liberty. For this purpose there are programmed didactic and academic activities, as well as theoretical classes, seminars, congresses and conferences.

450. In this context, Costa Rican professionals have taken part in various conferences such as:

a) the VIIth International Symposium on "Caring for survivors of torture: challenges for the medical and health profession" held on 15-17 November 1995 at Cape Town, South Africa, at which Dr. Juan Gerardo Ugalde Lobo described the position of Costa Rica in this field;

b) a seminar on "Teaching the prevention of torture and inhuman, cruel and degrading treatment", held in Tegucigalpa, Honduras, from 30 October to 1 November 1995, at which Dr. Grettcheng Flores Sandí explained the medico-legal evaluation of such cases.

c) Ninth Congress on Forensic Medicine and First Central American Congress on Forensic Pathology, held at the Centre for Latin American Studies (CEDAL), Costa Rica, in 1995, at which Dr. Olé Vedel Rasmussen presented the topic "Medico-legal aspects of torture".

d) International Symposium on Torture, held in New Delhi, India, on 20-24 September 1999, including a presentation on "The right to an autopsy: the case of prisoners".

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[30] Interview with UNED, August 1999.

451. In addition to the foregoing, various studies have been published, including:

a) "La valoración médico-legal del privado de libertad enfermo" (Medico-legal assessment of sick prisoners), in the Revista Latinoamericana de Derecho Médico y Medicina Legal;

b) "Enseñanza de los derechos humanos y la etica médica con énfasis en tortura en la Escuela de Medicina de la Universidad de Costa Rica" (Teaching human rights and medical ethics, with the emphasis on torture, at the Faculty of Medicine of the University of Costa Rica), published in the Revista Etica Profesional de Derechos Humanos y Prevención de la Tortura.

452. An aspect of some importance is that the topic of forensic instruction in order to identify cases of physical or psychological torture is included in the programmes of Legal Medicine for Medicine and Surgery in all the country's public and private universities, in the Law programmes for university students, in the post-graduate programmes in legal medicine for the Department of Legal Medicine for the judiciary and the University of Costa Rica, in the programme on Administration of Justice of the National University for Judges and Prosecutors of Costa Rica and Central America, in the seminars of the various university programmes, and in the courses for the Judicial Police.

Psychological profiling in the police forces

453. As regards the psychological treatment given to members of the police, there is no systematic policy for psychological testing. These tests are given only those requesting them, subject to observation and control of performance and conduct at work of the police under the Department of Human Resources, through the Office for Evaluation and Control, and under their immediate superiors and line managers.

454. Diagnostic psychological tests may be given to officers presenting problems of a psychological kind at work, if referred by their immediate line manager or superior. Various recommendations may result from such assessments, such as following a course of rehabilitation or therapy, withdrawal of a firearm, a referral to the medical service with a request for incapacitation or hospitalization, the loss of responsibility if considered unfit for work, redesigning the employee's tasks or transferring him to another unit.

455. In the case of officers in the prison system, especially those working with a child and juvenile population, a particular kind of profile is required, one appropriate for the population in question.

456. As regards the staff of the Judicial Investigation Department, each of its members, whether men or women, is given a full psychological assessment as part of the selection process. The Department has an Operational Psychological Support Unit in which psychologists conduct activities aimed at providing assistance in prevention, psychological treatment and operational support through training geared to reducing the risk of deterioration in the performance of one's duties, and providing psychological care and evaluation to those who wish for it. This programme includes regular visits to the various field and regional offices of the Organization, and its ultimate aim is to promote and strengthen the mental health of police personnel in the interest of their professional work.

Organization of the prison system

457. The prison system in Costa Rica is governed by Law No. 4762 of 8 May 1971, which set up the General Directorate of Social Rehabilitation. Since it was implemented there have been significant changes in the State of Costa Rica, and in the scale and kind of crime and accordingly, in the prison population itself. As already explained, a series of legal instruments have been promulgated to regulate the institutional regime and those associated with the operation of the prison system.

458. Within this structure, the following legal texts should be noted: through Law No. 4762 of 8 May 1971 the Board for Construction, Installation and Property Acquisition was set up, its aim being to support the workings of the General Directorate of Social Rehabilitation by making investments, issuing licences and administering funds relating to the agricultural and industrial activities of the national prison system.

459. In addition to the international instruments ratified by Costa Rica, under Executive Decree No. 22139-J, published in the official gazette La Gaceta No. 103 of 31 May 1993, the Regulation on the Rights and Duties of Persons Deprived of their Liberty was enacted. Executive Decree No. 22198-J, published in the official gazette La Gaceta No. 104 on 1 June 1993, enacted the Organic and Operational Regulation for the General Directorate of Social Rehabilitation.

460. The prison police, in accordance with Law No. 7410, published on 30 May 1994 - the General Law on Police, incorporating the statutes and career rules for the police - enjoy security of employment, proper remuneration in line with their individual capacities, and the right to proper training.

461. The legal instrument governing organizations of persons deprived of their liberty, and their relationship with the prison administration, was published in the Gaceta on 9 May 1997. This instruction regulates the various organizations without legal personality in the centres forming part of the national prison system, and the relations between the prison administration and all organizations of persons deprived of their liberty.

Visiting arrangements in prisons

462. As regards visits to centres within the Costa Rican prison system, governed by Executive Decree No. 25881-J, published in the official gazette La Gaceta on 31 March 1997, the rule is that order, discipline and institutional security must prevail. The main objective of visits is to contribute in maintaining and strengthening the ties between the person deprived of his or her liberty, and his or her family and community.

463. In the juvenile penal centres, those under 18 are entitled to one hour's visit twice a week and on Sundays, and everyone has four hours of visits. The authorities of the Zurquí Juvenile Training Centre are also drawing up a set of rules for conjugal visits.

464. The security conditions in the Admissions Unit of San Sebastián recently compelled the authorities to vary the visiting regime. The visiting timetable now depends on the area in which the prisoner is being held, visiting days being Saturdays and Sundays from 7 a.m. to 11 a.m. The San Sebastián prison centre holds 1,100 convicted prisoners, and each one is entitled to receive three people; this means that on visiting days the guards have to monitor over 4,000 people. With these new rules, the security agents will be able to check more closely the packages coming into the centre, including those carried by Lawyers.

465. Other texts are the Regulation for the Seizure of Drugs and Control of Medicines in the Costa Rican Prison System, promulgated according to Executive Decree No. 25883, published in the official gazette La Gaceta on 31 March 1997. This regulation provides the General Directorate of Social Rehabilitation with a range of mechanisms for regulating the entry, handing and use of substances which may have a negative effect on the health of persons in custody, including drugs, narcotic, psychotropic or mood-altering substances, inhalable substances, precursors, and derivatives of alcohol, and specifies how the entry of medicines is to be checked.

466. Finally, there is the Regulation on Personal Searches and Inspection of Property in the Costa Rican Prison System, Executive Decree No. 25882-J,. published on 21 March 1997. This regulation governs the search procedures for individuals and the inspection of property as they apply to visitors, persons deprived of liberty and prison staff, whether minors or adults, and the various items of property which may enter, remain in or leave prison centres in the Costa Rican prison system.

Protection for citizen against abuse of authority

Investigation of complaints in the Public Prosecutor's Office

467. Article 62 of the Code of Criminal Procedure states that investigation of all offences is the role of the Public Prosecutor's Office; for this purpose, "it shall investigate not only the circumstances which enable the accusation to be proved, but also those which serve to exempt the accused person from responsibility".

468. In this distribution of roles, the main disadvantages experienced by the prosecutors in investigating complaints against members of the security forces are:
a) problems with gathering evidence;
b) the modus operandi of the police. Generally, when abuses of authority or unlawful acts are committed, it is during the night and by two or three members of the force acting together;
c) the psychological shock felt by the affected person, which forms a barrier to obtaining the evidence;
d) the inability of the victim to identify fully the person responsible.

469. Usually the potential defendant comes to the prosecutor's office without a police uniform, which makes it difficult for the victim to identify him properly. Another significant obstacle to identification is the fact that not all members of the public police force or the Judicial Investigation Department carry visible identifying documents.

470. For the prosecutors, the nature of some police conduct stems from a mental and cultural problem. The country requires a change of mentality in its police officers and more training for members of the police forces, to enable them to internalise such basic aspects as the fact that in the six hours following arrest, the detained person must be brought before the prosecutors.

471. At present the Miscellaneous Offences Unit of the Public Prosecutor's Office, which is responsible for dealing with complaints of abuse of authority and deprivation of liberty against members of the police forces, is composed of four prosecutors and five assistants.

Complaints against the Civil Guard

472. "Generally, it is in police custody that most arbitrary actions are committed, sometimes through ignorance and sometimes deliberately. The definition of the term arbitrary is key, and has given rise to some discussion. It must not be confused with illegal or unjust. To be arbitrary, the arrest or detention must be "ordered without legal grounds or contrary to the law; or in application of a law which is itself unjust" or incompatible with human dignity or with the right to liberty and security of the person. A case may arise where the authority in charge detains an individual in the belief that he is committing a criminal law, when the facts subsequently show that there was no offence. Cases of flagrante delicto are not very common, and the offender is detained a long time afterwards, in the course of investigations, at a time when the possibility of error is increased. In this respect, the Constitutional Chamber has determined that police officers are not the ones authorized to define offences, since this is the task of the courts". (Decision No. 755-91 of the Constitutional Chamber).

473. In the period between November 1998 and April 1999, there were 34 complaints of abuse of authority against the police. On a monthly basis, they break down as follows: 14 in November, 3 in December, 7 in January, 4 in February,. 2 in March and 4 in April. In none of these months did the percentage of these complaints represent even 1% of all complaints. [31]

474. In the office of the Ombudsman, the following complaints of abuse of authority are under study: file 1700-22-95, irregular conduct; file 5828-21-98, detention of female workers; file 7003-22-99, police harassment; file 0053-20-98, arbitrary arrest; file 7035-22-99, attack upon a minor; file 7029-22-99, prohibition to navigate; 7192-22-99, physical abuse; and file 7184-22-99, arbitrary arrest.

475. During the same period, the Comptroller of Services of the Ministry of Public Security dealt with 18 complaints of abuse of authority, unlawful trespass, attacks on women, unlawful arrest, personal use of a police revolver and physical aggression.

476. The report on the situation for the rights of children and adolescents in Costa Rica, published by UNICEF and the University of Costa Rica, reiterates that "according to the evidence given by two teenagers who had been working in the street for several years, there is evidence of cases of arbitrary arrest and improper, sometimes abusive, treatment of teenagers by the police."

477. To illustrate a situation which unfortunately does exist, in spite of the administrative and judicial measures which have been adopted, we have the testimony of the girl M, who has worked as a street seller since the age of 5, and whose account goes back to 1995. M is now 20 years old, and two years ago she cooperated with a non-governmental programme for preventing juvenile crime.

478. Her testimony came about as the result of an operation to monitor commercial undertakings on public roads: "See, I remember another time when I was selling things in the Sabana park with a niece five years old. I remember that they ran their horses at us and my niece screamed and screamed, crying out desperately "help". Then they came up and said to me 'go away if you don't want us to make you.' "I'm not going away, if you want me to go you have to have a confiscation warrant to stop me selling here.' They didn't give me one, but they took all my things away to the Mounted Police station, then they took me into custody with my niece. The colonel said "look, we should have given you a confiscation warrant and we didn't, so you can make a complaint. I don't have much faith in complaints."

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[31] Information taken from the report of the Ministry for Public Security, Governance and Police, July 1999, page 8.

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479. A complaint against a group of police officers in the city of Golfito, on the south Pacific coast of Costa Rica, was published in Diario Extra on 10 December 1999. The most relevant aspects mentioned in the report were that "because he did not know Spanish, a youth from the United States was brutally beaten by five police officers, who kicked him in the stomach, before knocking him several times to the ground." The facts complained of indicate that the young man, who had been only a few days in the country, was carrying a video recorder to be repaired, but as the workshop was closed he was on his way back to the hotel where he was staying. When he was stopped by the police he was unable to explain the situation, and was therefore taken to the police station where he was beaten. In his state of despair he managed to note down the telephone number of the hotel, and when the officers found it was all a mistake they let him go free.

480. For the purpose of investigating complaints against his officials, the Minister of Public Security is supported by the Department for Police Inspection, which arranges internal investigations in order to verify facts and allocate responsibility.

481. The Department for Police Inspection was set up through Executive Decree No. 25938-SP, published in the official gazette La Gaceta No. 73 on 17 April 1997. According to paragraphs 48 and 68 of the General Law on the Police, it is the agency responsible for organizing administrative disciplinary proceedings, and has to arrange for both the investigation and deliberation stages, and send the various decision-making bodies the recommendation which emerges from this legal process.

482. In its investigative function, the Department for Police Inspection relies on the Division of Internal Affairs, set up by Decree No. 26357-SP, published in the official gazette La Gaceta No. 203 on 22 October 1997. The primary aim of this unit is to assist the Department of Police Inspection in the preliminary investigations, and to gather information and evidence of misconduct or irregularities reported against the police.

483. The kinds of misconduct which may constitute abuse of authority are specified in article 10 of the General Law on the Police, which states that "in the performance of their duties, the members of the police forces must respect the following rules: d) using force only when strictly necessary and to the extent required for the discharge of their functions..". Article 65 (b) (e) and (g) provides that for this purpose grave misconduct is: b) any conduct defined in the criminal law as a deliberate criminal law; e) the indiscriminate, unnecessary or excessive use of force in the performance of their duties and g) any abuse of authority or mistreatment of persons, even if not a criminal offence.

484. If it is found through the administrative investigation - which has to comply with all the constitutional safeguards - that an abuse of authority has been committed by one of the officials of the Ministry of Public Security, the sanction is dismissal, and a copy of the file is sent to the Public Prosecutor for criminal proceedings.

485. To give an idea of this procedure, on Friday 30 July 1999 the trial court of Heredia convicted four former members of the police for offences of extortion (taking advantage of one's office to commit a crime), deprivation of liberty, violation of a private home and armed aggression. The case went back to September 1995, when they had been involved in these offences against three persons in the course of their duties.

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[32] UNICEF/University of Costa Rica, Análisis situacional de los derechos de las niñas y las adolescentes en Costa Rica, 10th Special Edition, 1999.

486. The Public Prosecutor's office instigated an investigation against several members of the Fifth Commissariat, who had been accused on a number of occasions of abuses of authority (February 2000). In order to deal with these allegations and to facilitate the process of identification, the Office decided to put together an album of photographs of the members of this police unit, and held talks with the senior staff of the Ministry of Public Security in order to review the situation.

487. According to evaluations by the Public Prosecutor's office, complaints against the police vary considerably in number, reaching a high point in the months preceding the presidential elections. One point worth noting is that there are no recorded complaints against the police for sexual offences.

Complaints against officers of the OIJ

488. For the purpose of internal supervision, the Judicial Investigation Department has a Supervisory Unit and an Office of Internal Affairs, in order to ensure full respect for the human rights of any person apprehended by the OIJ. There is also the supervisory function exercised by the forensic doctors, who make daily visits to detained persons in order to protect their physical integrity.

489. As for the various offences identified in the Ministry, the main complaints made against members of the technical judicial police concern wounding, generally as a result of the excessive use of force.

490. In the context of complaints against officials of the OIJ, the most relevant case is the trial of three former officers who were accused of causing the death of the minor William Elember Lee Malcon.

491. The facts go back to 16 September 1993, when OIJ agents were rounding up suspected juvenile delinquents in San José. While the agents were in the vicinity of the San Juan de Dios hospital they noticed Lee Malcon and detained him, but the youth died shortly afterwards, apparently after being severely beaten.

492. The newspaper La Nación, in its edition of 18 September 1993, page 4 A, described the events as follows:

493. "Lee Malcon, Robinson Watson, the person who had disappeared and three other boys were caught on Thursday night by judicial police from the Assault Division, in the vicinity of the hospital San Juan de Dios .. They were taken to the OIJ building where they remained for an hour .. The head of the Public Prosecutor's office reported that the investigators acted irregularly, since they did not check on either the entry or the exit of three of the captives… Lee Malcon was taken by a group of police and allegedly brought by them to an site where the group had hidden weapons. .. At a time not yet established, the prisoner was tortured and then murdered."

494. The result was that seven judicial officers were tried and sentenced, on 8 July 1997, by the higher first instance criminal court of San José, which acquitted them of involuntary manslaughter and found them guilty of the offence of abuse of authority. However, the judgement was appealed to the Court of Cassation, which set it aside. In a subsequent

judgement, the Court sentenced each of the three former officers to one year's imprisonment for the crime of unintentional homicide. The Court also sentenced one of the former officers to two years for the offence of aggravated deprivation of liberty, and the other two to three months imprisonment for abuse of authority. The sentence meant that they were barred from performing the duties of officers of the Judicial Investigation Department for a term of 5 years, and set a figure of 5 million colones (16,181 dollars) State compensation for the mother of the dead youth.

495. Another widely publicized case against this police force was the one brought against Mr Raúl Marchena, on 19 December 1995. The facts of this case, as described by the newspaper La Nación on 17 October 1996, were as follows:

496. "A bicycle had been stolen on 2 December. Believing that it had been stolen by the "gang" I was with, they detained me on the 18th for an hour. They handcuffed me, punched and kicked me, beat me with the flat of their hands in the eyes and left my ears ringing. I was as good as deaf for six days. About five times they put on me a bag of black fabric, put my head in it and squeezed me, I felt that I was suffocating. That's why they were worried when I made the complaint, as they had the bag in the police station. There were hairs in the bag, they took some hairs from me and analyzed them, and they were the same. But there were other people."

497. In view of these facts, the Office of the Ombudsman considered that the attacks attributed to two OIJ officers against the minor Raúl Marchena at San Ramón de Alajuela should be defined as torture. Both officers were dismissed from their posts.

498. Four former officers of the OIJ attached to the Siquirres police station, in Limón, are now being tried for the murder of Johnny Quesada Vargas, known as "41". The former officers are facing a charge of manslaughter in connection with an incident in 1996. One of the former officers had been sentenced in 1997 to 12 years imprisonment for the death of Mr Ciro Monge, who died in the same incident as Mr Quesada Vargas. This former officer had fled to the United States before the sentence became final, but was repatriated on 2 February 2000.

499. When a complaint is lodged against an official of the OIJ for abuse of authority or any other offence, as well as a criminal procedure an administrative disciplinary investigation is put in train by the Office of Internal Affairs, in order to determine the extent of responsibility of the officer concerned. The outcome may range from a sanction to dismissal.

Complaints within the prison system

500. As for complaints of abuse made by persons deprived of their liberty, these fall into the following categories: the use of force, prison work (the rebate awarded for work done in prison), minimum conditions in the centres, use of handcuffs, searches, the right to health, conjugal visits, the entry of persons and objects, the right to petition and receive a reply, the disciplinary regime, due process and the right to information.

501. In its report for the period 1997-1998, the Office of the Ombudsman emphasized the need to continue training, both for "public security agents and for prison staff, in order to guarantee respect for the human rights of the prison population".

. In this connection, some former prisoners who were consulted in the preparation of the ort have said that the Costa Rican prison system has serious shortcomings as regards hygiene. They mention problems in the drinking water supply and in sewage, causing constant health problems, and mention as an institutional error the appointment of the same prisoners to distribute soap or carbolic bars, because they usually end up selling them to get drugs. They also mention poor food, especially poor food handling; the use of handcuffs when prisoners are very ill; the use of vehicles which do not meet the conditions required for transporting sick prisoners from the centres to hospital; problems in getting leave of absence in special circumstances such as the death of close relatives, and reprisals within the system when individual situations are complained of to the defence organizations.

503. It should be said that from the institutional point of view, many of these complaints have already been considered, or are now under consideration. The Social Adaptation authorities have rejected the statements by the former prisoners, saying that there are no problems with water in the penal centres; what happens is water rationing, to prevent damage to the pipes and unnecessary waste. Moreover, repairs have been effected at the penal centre La Reforma to ensure that the water will be drinkable.

504. As for the distribution of personal hygiene articles (soap, toothpaste and toilet paper), these articles are given individually to each prisoner and there are no checks on what the prisoners do with them. In that regard, the authorities say, it is the prisoners who trade the articles among themselves.

505. As for the complaints of poor food, the prison authorities reject the statements by the former prisoners. They say that food is provided three times a day in each centre: at breakfast, which consists of a cup of coffee with bread; at lunch and at dinner, which usually consists of rice, beans, a salad and minced meat, standard items of the Costa Rican diet.

506. In the juvenile penal centres, there is an adequate diet which includes, according to season, fruit, vegetables, meat, cereals, milk and other items. The San José Juvenile Centre has its own bakery.

507. As part of the institutional effort to provide better conditions in the Costa Rican prison system, in January 2000 a self-contained kitchen was installed at the La Reforma prison, which will enable better, cleaner and more satisfactory treatment of food prepared at the main Costa Rican penal centre.

508. As regards transport to the prisons, the vehicles used are those which belong to the prisons, including a special vehicle donated in 1998, although the problem remains that in an emergency the Red Cross is not present because they do not take responsibility for transport. As for the other complaints, there are official channels for making them and for ensuring that rights are fully respected. [33]

509. As for complaints against security staff of the Good Shepherd Women's Centre, there were two complaints in the early months of 2000 for alleged inappropriate searches presented to the Office of the Ombudsman, and these are being investigated.

510. Concerning the juvenile penal centres, if irregularities are found in the behaviour of any official towards the inmates, such as assault, abuse, profiteering, etc., the official is transferred to another centre or suspended, depending on the gravity of the conduct, while proceedings are in train.

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[33] Interview with Mr Marino Sagot, Deputy Director of the Department of Social Adaptation, Ministry of Justice, 9 August 1999.

511. Costa Rican courts have dealt with a number of cases of ill-treatment within the prison system. The most outstanding cases are the following:

512. In its decision No. 0672-97 of 31 January 1997, the Constitutional Chamber of the Supreme Court of Justice heard an application for habeas corpus by Alexander Castro against the security chief at the La Reforma penal centre. According to the statement of grounds, the applicant had been the victim of a fierce attack by the security guards, who locked him in a maximum security cell and beat him viciously. The chief of security at the prison alleged that it had been necessary to resort to force because of the aggression and violence displayed by the prisoner. The appeal was upheld and the State was ordered to pay damages.

513. In this judgement, the Chamber gave an interesting interpretation of the rights of persons deprived of their liberty. In view of its importance, it is quoted here in full:

514. "The penalty of deprivation of liberty consists in the confinement of the convicted person in a penal establishment (a prison or a social adaptation centre) in which he is, to a greater or lesser extent, deprived of his liberty and subjected to a certain regime. Penalties involving deprivation of liberty should be organized on a broad humanitarian basis, and in their execution should exclude anything offensive to human dignity, always bearing in mind the human being in the person of the offender. For this reason, in executing the penalty of deprivation of liberty, it is necessary to inculcate in the prisoner and in the public officials responsible the idea that the prisoner is not, as a result of his conviction, transformed into an extra-social being, but continues to belong to the community, and is in full possession of the rights pertaining to him as a man and a citizen, except for those forfeited or reduced as a result of the conviction itself. At the same time, it is necessary to foster and fortify the sense of responsibility and respect for the dignity of the person, because they must be treated with the consideration due to their human nature. These principles must be present in the execution of all penalties and penal measures, especially those involving deprivation of liberty."

515. The judgement goes on to state that "the convict.. is not an alieni juris, he has a public Law relationship with the State irrespective of the rights forfeited or limited as a result of the conviction. His legal status is the same as that of non-convicted persons, except as regards the rights which have been reduced or forfeited. The rights which a prisoner possesses - which include the right to proper treatment, to health, to work, to vocational training or education, to physical and cultural recreation, to visits to friends and relatives, to security, to food and clothing, etc. - must be respected by the administrative authorities in executing the penalty, and also with regard to those in preventive detention or pre-trial persons, since detainees cannot be deprived of these rights, except on legitimate grounds provided by Law."

516. The key point here is the recognition of the dignity of the human person, an essential value within the Costa Rican legal order. In our Law there is no rule making one human being superior to another. Human dignity does not admit of any discrimination based on birth, race, sex, opinions or beliefs, and is not dependent on age, intelligence or mental health, individual circumstances or characteristics, or conduct or behaviour.

517. Before submitting the application mentioned above, Castro Campos had submitted a previous habeas corpus appeal against the La Reforma prison. The reasons for the appeal were constant ill-treatment and the use of violence to restrain the internees. This appeal was also upheld by the Chamber, which said that "the prison authorities may only use force in exceptional circumstances to render powerless a prisoner who is causing a disturbance such as to endanger institutional security, but this use must be reasonable" (emphasis added).

518. In its decision No. 4903-93 of 5 October 1993, the Chamber dealt with an application for habeas corpus filed by Errol de la Fuente Young, on behalf of Heyner Rivas Marin, against the security supervisor of the Closed Section of the La Reforma prison. The basis of the appeal was the excessive use of force; the Constitutional Chamber, after considering the facts in the case, upheld the appeal as a flagrant breach of article 40 of the Constitution.

519. In its decision No.5996-96, the Chamber also upheld a habeas corpus appeal on behalf of an inmate against whom gas had been used to restrain him during a violent incident. The judgement reads as follows:

"Although both the law and the regulations in force permit the security forces to use devices which on activation emit lacrymogenic, irritant or paralysing gases, inter alia to control critical situations which threaten the interests of the institution, these methods must be deployed in a reasonable manner, that is, in accordance with the particular features and requirements of each case."

520. In the same line of conduct, decision 1671-94 expands on the concepts in the judgement of the highest constitutional court, and is quoted here:

521. "This Chamber cannot allow the use of lacrymogenic gas as a method of controlling the conduct of an inmate who was isolated in a one-person cell of reduced dimensions. The facts complained of were an attack on the health and physical integrity of the applicant, and the action taken was excessive and irrational, since because there was no practical way of mitigating beforehand the consequences, which could be very serious, of using such a gas in the conditions of space and ventilation which may be supposed to exist in such one-person cells. These laws are unlawful because both constitutional Law and international instruments totally prohibit the use of cruel and degrading treatment towards persons deprived of their liberty .. There are other methods more in accordance with human dignity, safer and internationally approved, which protect in a more humane manner the physical and moral integrity of a prisoner who is resisting his guards."

522. In relation to the use of force, decision No. 1168-94 of the Constitutional Chamber stated that "..physical maltreatment or the use of any degrading procedure against detainees are prohibited, and the use of force which is sought to be justified in cases of possible escape or attack on the authorities is only to be applied as an exceptional measure and only in a reasonable form which is proportional to the degree of violence and aggression shown by the detainee; physical maltreatment which is disproportionate and unnecessary to prevent escape and bring the detainee under control is not justified."

523. The reasonable and proportionate use of force was discussed in decision No. 3506-94, in which the constitutional case Law established that "…security agents are obliged to law within the limits of reasonableness and proportionality in their conduct towards those deprived of liberty in order to restrain them when strictly necessary. The prison system has a full range of juridical instruments to sanction the non-fulfilment of duties and obligations by prisoners, in accordance with the rules governing them, all of which bars the disproportionate use of force.."

524. The lack of proportionality in the use of force was also reflected in decision No. 1055-V-96 of the Constitutional Chamber when it upheld the amparo appeal lodged by Francisco Oses Cruz against the La Reforma centre, stating that "rational force consists in a proper use

of force to restrain an individual without causing him physical damage or injury of any kind, which would become aggression and failure to use "reasonable force".

525. The Ministry of Justice, through the Department of Social Adaptation and within the limits of its financial resources, keeps the prison population informed of its rights and obligations, through wall posters placed in each of the wings and through the legal unit set up in each institution. It is important to note that the legal unit of the Ministry of Justice promotes group activities to inform prisoners of their rights and duties.

526. In the case of juvenile penal centres, there is a set of Disciplinary Regulations which include the rights and duties of the inmates. These regulations classify forms of non-compliance ranging from minor to serious, and in each instance ensures due process, which includes the preparation of an incident report, the reading of the report to the juvenile and the right to a defence. Each offence is reported to the Assessment Panel, which decides the sanction to be imposed; in most cases, this will be a reprimand or the loss of an incentive, and in very serious cases, such as inflicting grave injury on another young person or a staff member, will be reported to the appropriate authorities.

Report by the Women's Legal Defence Office on the situation of women prisoners

527. The Office of the Ombudsman, through the Women's Legal Defence Office, carried out an investigation in 1995 for the purpose of finding out the conditions in which the penalty of deprivation of liberty was being executed in the Good Shepherd Centre and, in general, the conditions in which women prisoners were being held. This resulted in a number of recommendations to the Government, which have been gradually dealt with. [34]

528. The main observations and recommendations were as follows: an increase of over 65% in the prison population at the Centre in the period under review, which has a negative impact on services and on the operation and infrastructure of the institution; new regulations in the sphere of childcare as regards the maximum stay of minors, which is now limited to children of up to one year; the absence of any specialist gynaecological personnel; the enhancement of education services through an agreement with the Ministry of Education and other bodies; an increase in the number of complaints of breach of due process coming from prisoners, and an increase in complaints of breaches of the work regime coming from women police officers in the prison system.

529. The corresponding report from the organization for 1999 records the main complaints from women prisoners are about physical overcrowding, the lack of information about the final outcome of the conviction, so that they reject the reasoning underlying the length of the sentence and the criteria governing it; delays in reassessing sentences; a lack of information about commutation of penalties and a long waiting time before permission was given for conjugal visits, especially for pre-trial prisoners.

530. Other observations relate to the limited scope for work within the Centre; various problems with health care; restriction on maternity rights, because of slow and arbitrary procedures for enabling women prisoners to see their children, or to change the person looking after them (these complaints were handled under the following file numbers: 7502-21-99, 7494-21-99, 7483-21-99, 7473-21-99, 7465-21-99, 7329-21-00, 7311-21-99, 7165-21-99, 7162-21-99, 7158-21-99 and 5911-21-99). The same problems crop up most frequently in

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[34] Notes on the statement by Alejandra Mora on women prisoners and respect for their rights, Office of the Ombudsman.

workshops about the rights of women prisoners, according to the 1999 report of the organization.

531. In order to follow up the recommendations, the organization regularly updates the information it has obtained and analyzed. For this purpose, regular meetings are held with members of the board of governors of the Good Shepherd Centre, representatives of the Institute of Criminology and of the Programme of Institutional Care of the Ministry of Justice, to work on the most relevant facts disclosed in the investigation and in the annual reports.

532. The Women's Legal Defence organization is also developing other ways of dealing with the various populations of the Centre, such as the reception, handling and resolution of formal complaints, the holding of formal advice sessions, frequent visits to the Centre, participation at workshops for training and inter-agency coordination with other bodies such as ILANUD, all intended to promote and safeguard the rights of women prisoners.

The prison population

533. As of May 1999, the population of the 13 prisons in the country was 5,278 under an institutional regime (enclosed) and 691 under a semi-institutional regime (partly open). As for the number of inmates, the La Reforma Centre had 1,877 inmates in May 1999 and San Sebastián had 1,019. In the case of the San José Centre (San Sebastián), of the total population of 1,019 detainees, there were 672 pre-trial persons. It is hoped to locate convicted prisoners in the early months of 2000 in the La Reforma Centre, San Rafael or semi-institutional centres. This will mean that the profile of the institution can be redefined, as a centre exclusively for pre-trial persons.

534. The women's detention centre El Buen Pastor (the Good Shepherd Centre), as of 23 February 2000, had 375 inmates, whose legal situation was as follows: 228 convicted person, 13 pre-trial persons, convicted and pre-trial persons 7; maintenance award, 1. [35]

535. The juvenile penitentiary system had a total population of 23 inmates on 11 January 2000, of whom 8 were pre-trial and 12 convicted youths; there were also 3 women inmates, one pre-trial and 2 convicted. [36]

536. As for the foreign prison population, the largest number consists of Nicaraguan citizens, followed by Colombians and Panamanians. The most frequent offences are those against life or property and those connected with the international drug trade.

537. On the basis of the information supplied by the Department of Social Adaptation, the nationality of foreigners in Costa Rican prisons is as follows:

Nationality	**Number**	**Percentage**
Nicaragua	500	60.45
Colombia	99	11.97
Panama	66	7.98
Guatemala	30	3.62
United States	20	2.41

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[35] Information supplied by the management of the Good Shepherd Centre, Ministry of Justice, DCBP office 137, 23 February 2000.

[36] Information supplied by the Department for the Juvenile Penitentiary System, January 2000.

Cuba	17	2.05
Jamaica	12	1.45
El Salvador	12	1.45
Dominican Republic	11	1.33
Honduras	9	1.08
Mexico	9	1.08
China	6	0.72
Spain	5	0.60
Italy	5	0.60
France	4	0.48
Venezuela	4	0.48
Peru	4	0.48
Indonesia	2	0.24
Germany	2	0.24
Ecuador	2	0.24
Poland	1	0.12
Guyana	1	0.12
Switzerland	1	0.12
Egypt	1	0.12
Uruguay	1	0.12
Puerto Rico	1	0.12
Netherlands	1	0.12
Austria	1	0.12
TOTAL	827	100

Source: Prepared by the Ministry of External Relations on the basis of general figures supplied by the Department of Statistics of the General Directorate of Social Adaptation of the Ministry of Justice.

538. It should be explained that not all detainees are residents of the country, and some were arrested while in transit through the country, especially in offences linked to the international drug trade.

539. With regard to foreigners detained in the country's penal centres, it must be emphasized that the country secures compliance with article 5 (a), (d), (e) and (I), article 36 and article 38 of the Vienna Convention on Consular Relations, which lay down the essential requirements for enjoying the right of due process, and especially the facilitation of the exercise of consular functions towards nationals of a State who have been detained or are serving a penal sentence.

540. Costa Rica is not an exception to the widespread problem of over-population in prisons, and an account of this has been given in the newspaper La Nación, revealing some of the serious problems encountered in Costa Rican prisons, especially in the Penitentiary Centre San Sebastián, which was planned to house 400 inmates and now has a population of 1,019. The figure for over-population, which fell in the last months of 1999 and the first months of 2000, is 35% (1400 detainees).[37]

541. The report records the problems of overcrowding, the use of areas intended for other use as dormitories, heavy wear and tear on beds and problems of ventilation and lighting, to mention a few of the problems. Overcrowding is especially evident at night, when many

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[37] "Nuevas cárceles", La Nación, Editorial, 11 February 2000.

mattresses have to be put down on the floor, especially in the prisons of San Sebastián, La Reforma, Limón and Heredia. [38]

542. The problem for the prison system is due basically to the lack in recent years of substantial investment in infrastructure, at a time when Costa Rican society has increasingly resorted to using imprisonment and increased penalties as the sole response to the phenomenon of crime, with the result that between 1994 and 1999 the prison population has doubled, while the average length of stay in prison has also increased.

543. On 30 November 1998, the capacity in penitentiaries for holding the prison population was as follows:

CENTRE	Housing capacity		Overpopulation : full capacity = 100			
	Installed capacity		Population			
	Absolute	%	Absolute	%	Absolute	%
San José	472	12	1,077	19	605	228.2
Reforma	1770	45	2,277	41	507	128.6
Buen Pastor	174	4	377	7	203	216.7
Cartago	80	2	106	2	26	132.5
Heredia	56	1	158	3	102	216.7
Liberia	64	2	92	2	28	143.7
Puntarenas	170	4	187	3	17	110.0
Limón	170	4	240	4	70	141.2
Pérez Zeledón	170	4	249	4	79	146.5
San Ramón	50	1	68	1	18	136.0
San Carlos	160	4	103	2	-57	64.4
Pococí	220	6	211	4	-9	95.9
San Rafael	244	6	352	6	108	144.3
Adulto Mayor	150	4	75	1	-5	50.0
TOTAL	3,950	100	5,572	100	1,022	141.1

Source: General Directorate of Social Adaptation, Ministry of Justice and Pardons. Report on the State of the Nation, UNDP, 1999, page 263.

544. On this question, the report of the Office of the Ombudsman for 1999 says that "The prison system has long been the hidden face of society, in which penal reform and the progress in penal policy during the 1960s were abandoned, and there is now a prison system with insufficient infrastructure to house the population and without an adequate budget to cope with administrative and legal requirements and to deal with the prisoners. Training for staff of the prison system has also been neglected, and some of them have been absorbed into the system itself, losing the concept of managing and operating a system of readaptation in which human rights are to be protected." [39]

545. In respect of the report of the Office of the Ombudsman, it is important to note that with the entry into force of the new Code of Criminal Procedure and the Law on Juvenile Justice, the Costa Rican system of criminal procedural law has incorporated the procedure of release

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[38] "Cárcel enferma de gente", La Nación, El país, 3 October 1999, page 4A.

on parole and alternative forms of sentencing, making prison a less and less favoured option for the criminal courts.

546. It is also important to note that the prison population increased by 2,100 during the period May 1998 - May 1999, the same increase as between 1992 and 1997. In order to understand this increase in the population, key factors must be taken into account, such as demographic growth, the economic downturn and the consequent social pressures which contribute to crime. Account should also be taken of certain aggravating circumstances such as the increase in penalties ((the maximum rising from 25 to 50 years); the increase in the average length of stay, which was previously 7 years and is now 14 years; the increase in homicides caused by traffic incidents; the increased use of preventive detention; the lack of adequate security measures to cope with the marked rise in aggression among offenders; and the insufficiency of sources of employment, because of various kinds of prejudice. [40]

547. With regard to the comments in the 1999 report from the Office of the Ombudsman to the effect that "the staff may lose the idea of managing and operating a rehabilitation system", the authorities of the General Directorate of Social Rehabilitation say that on the contrary, the training given to staff is geared to inculcating the values of full respect for the dignity of prisoners.

548. Some of the former prisoners taking part in the project "Listen to your voice" of the Latin American Institute for Prevention and Health Education spoke in interviews about the serious hygiene and health problems at La Reforma, especially the problems with drinking water and sewage - the complaint and institutional response to which we have already referred. They also mentioned food problems, saying that although food was available, it was not properly supervised and there was very poor food handling, resulting in constant stomach disorders. We note that these complaints were made before the recent inauguration of the new kitchen at the La Reforma prison.

549. However, in recent months repairs have been made to the plumbing at the prison, and with the transfer of prisoners to new penal centres it is hoped the problem will be solved. As for the food, there is a system of checks in the institution to ensure that no inmate is left without food; the stomach problems complained of by the prisoners are caused, according to the prison authorities, by the eating habits of the inmates, who are accustomed not to eat their food in the areas and at the times when it is given to them, but in their cells and usually in a reheated state.

Pre-trial detainees in the prison system

550. A report compiled by the Plenary Court in early 2000 showed that during 1999, a total of 906 people were in detention, under suspicion having committed some offence, but not yet sentenced. This figure exceeds the total for 1998, when there were 800 indictments. In 1997, courts made a total of 784 orders for preventive detention.

551. According to the report: "it is impossible to order preventive detention for all those pre-trial in criminal cases, not only because of the institutional problem this would cause, by undermining the principle of innocence, but also because of the high financial cost it would involve". Calculations by the Ministry of Justice indicate that the daily cost of maintaining one person in the national prison system is 50,000 colones.

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552. On the same question, an article published in the Review of Criminology in May 1999 stated that "In 1981 Costa Rica had a total of 2,407 prisoners, of whom 1,141 had not been convicted (47% of the total). In 1995 there were 4,200 prisoners, of whom 1,164 were not convicted, i.1., 28%. In the first quarter of last year (no more recent data are available), the largest group in preventive detention was there for between one day and three months, numbering 540 people. There were 28 cases of non-convicted prisoners staying for over 12 months."[41]

553. From 1990 to 1999, the figures for detained persons are as follows:

Time in detention	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Up to 3 mths	332	378	251	283	373	520	519	407	473	540
up to 6 mths	202	159	106	91	125	197	225	184	171	201
up to 12 mths	58	23	24	34	17	39	42	41	28	42
over 12 mths	124	78	46	22	20	40	51	41	26	28
TOTAL	818	745	467	469	612	867	933	784	800	906

Note: The information for 1999 covers the period January - June.
Source: Report of the Plenary Court, February 2000.

554. According to the statistics kept by the Department for Planning Judicial Services, on 30 September 1999 the number of persons detained without having been convicted increased for the third consecutive quarter, exceeding the barrier of 1000 individuals. The rise over this latter period was almost entirely caused by the criminal courts, as in the ordinary courts ?the increase was only three.

555. The trend shown by this variable over the past 12 months is as follows:

Date	Persons in custody	Judicial office		
		Criminal tribunal	Criminal court	Prosecutor's office
30-09-98	947	242	684	21
31-12-98	800	156	630	14
31-03-99	849	189	652	8
30-06-99	906	167	739	-
30-09-99	1020	170	850	-

Source: Statistics Service, Planning Department, Judicial Services, February 2000.

556. It will be seen that in the past six months, the number of persons detained by an order of the criminal courts has increased by almost 200. The first circuit criminal court of San José

is the court showing the most significant increase, since on 30 June it had pre-trial 153 persons, and three months later the figure had risen to 210, an increase of 57.

557. The two courts with the biggest increases or reductions over this quarter were:

PERSONS IN CUSTODY

Criminal court	30-06-99	30-09-99	Variation
1st circuit San José	153	210	+57
Heredia	32	53	+21
2nd circuit San José	126	112	-14
Siquirres	29	16	-13

Source: Statistics Service, Planning Department, Judicial Services, February 2000.

558. The number of persons held in prison, in percentage terms, is as follows:

Time spent in prison	Persons in custody						
	1994	1995	1996	1997	1998	1999	
						31.03	30.06	30.09
up to 3 mths	60.9	60.0	55.6	51.9	59.1	61.1	59.6	62.1
3 to 6 mths	20.4	22.7	24.1	23.5	21.4	22.4	23.1	21.7
6 to 9 mths	2.8	4.5	4.5	5.2	3.5	5.0	4.6	5.7
over 12 mths	3.3	4.6	5.5	5.2	3.2	2.7	3.1	2.5
TOTAL	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**

Source: *Statistics Service, Planning Department, Judicial Services, February 2000.*

559. Among these figures, two aspects merit attention: the increase in persons detained in the last quarter under review (114), consisted almost entirely of the group which spent a maximum of three months in prison (93 people more); the second point is the continuous increase in the number of detainees spending nine or more months in prison (54, 67, 70 and 84), an increase which lies in the group with 9 months and one day to 12 months, since the volume of those spending over one year has remained virtually the same (26, 23, 28 and 26).

560. In general terms, it may be said that between 80 and 83 per cent of those detained without having been convicted in Costa Rica spends a maximum of 6 months in prison.

NON-CONVICTED PRISONERS

	TOTALS			**RELATIVE FIGURES**	
DATE	**TOTAL**	**Up to 6 months**	**Over 6 months**	**Up to 6 months**	**Over 6 months**
30-09-98	947	760	187	80.3	19.7
31-12-98	800	644	156	80.5	19.5
31-03-99	840	700	140	83.5	16.5

30-09-99	1020	854	166	83.7	16.3

Source: Statistics Service, Planning Department, Judicial Services, February 2000.

561. Having shown very few changes over the three most recent periods, the number of detainees having committed property offences increased by almost 90 persons against the previous quarter; by contrast, the only category which showed a reduction was the one for sexual offences, which was down from 118 to 109 persons.

PERSONS IN CUSTODY

Chapter or law		**30.09**	**31.12**	**31.03**	**30.06**	**30.09**
	98	**98**	**99**	**99**	**99**	
Property offences	472	383	391	392	483	
Drug law offences	200	201	222	243	247	
Offences against life	119	98	94	105	133	
Sexual offences	98	86	101	118	109	
Others	58	32	41	48	48	

Source: Statistics Service, Planning Department, Judicial Services, February 2000.

PERSONS IN CUSTODY PERCENTAGE

Chapter or law		**30.09**	**31.12**	**31.03**	**30.06**	**30.09**
	98	**98**	**99**	**99**	**99**	
Property offences	49.9	47.9	46.0	43.3	47.4	
Drug law offences	21.1	25.1	26.2		26.8	24.2
Offences against life	12.6	12.2	11.1	11.6	13.0	
Sexual offences	6.1	4.0	4.8	5.3	4.7	
Total	**100**	**100**	**100**	**100**	**100**	

Source: Statistics Service, Planning Department, Judicial Services, February 2000.

562. A fuller statistical analysis is found in the document "Criminal cases in the justice system (1987-1997)", published by the Planning Department (Statistics Service) of the Judicial Services in August 1998.

The prison infrastructure

563. There is at present a major plan for prison infrastructure, with a study under way for opening new centre and for adapting and extending others, raising external funds for the purpose. These plans are part of an ambitious project to ward off the collapse of the prison system and cope with the increase in the numbers and length of detention of prisoners caused by the implementation of the new Code of Criminal Procedure.

564. A recent editorial in the newspaper La Nación describes the ambitious prison building programme and other projects for humanizing the prison system which have been launched by ministers for the period 1998-2002. This plan "deserves support, since it will dignify the condition of the prisoner and the human being, and contribute to extirpating one of the most shameful areas of violation of human rights in our country, a cause of frequent international criticism." [42]

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565. The government of Costa Rica has invested 1.5 million in prison infrastructure during 1999. For instance, in March 2000 a new prison was opened at Cartago, 21 km from San José. The works, costing 245 million ($792,880) will help to improve living conditions and mitigate overcrowding. The new centre will have capacity for 180 detainees, over a site of 2,674 square metres, and will include cells, visiting areas, sports grounds, workshops and educational premises.

566. Improvements in the prisons include the refurbishment of the former Zeledón Women's Amparo Centre, which has now been transformed into the Zurquí Juvenile Training Centre, the refurbishment of 50% of the La Reforma prison - the largest in the country ,- the construction of the new Good Shepherd centre, the second stage of the prisons at San Carlos and Liberia, the relocation of the Third Age Centre and of the Centre for Criminological and Prison Training.

567. The sums invested are over 100 million for the Liberia Centre for Institutional Care; 71 million for the San Carlos Centre for Institutional Care; 250 million for the Good Shepherd Centre for Institutional Care; and 125 million for the visiting area of the La Reforma centre.

568. In the case of the infrastructural improvements at the Good Shepherd Centre, there are plans to build a new prison centre with a module for third age persons, separate modules for convicted and pre-trial prisoners, maintenance cases and young adults (who have committed an offence while minors but reach their majority as prisoners).

569. Works at the Good Shepherd Centre to solve the overcrowding problems experienced there for some years, ranging from overcrowding to a plague of rats and the poor state of at least the sanitary installations in block 3, wing D of the prison, were held up by a dispute between the Municipality of Desamparados and the justice authorities. However, the Constitutional Chamber upheld an amparo application submitted by the inmates, and in early July 2000 the Ministry of Justice began building work on the new phase of the prison.[43] A recent agreement between the Ministry of Public Security and the Ministry of Justice made it possible to transfer the facilities at the National Police Academy, where about 700 convicted persons are kept. By 20 March 2000 it is hoped the second transfer will take place of convicted prisoners, which will mean that by April 2000 the San Sebastián Centre will only be holding pre-trial prisoners.

570. With this project, the authorities at the Ministry of Justice hope to mitigate the problem of overcrowding and improve the classification of the prison population.

571. The refurbishment of the Zurquí Juvenile Training Centre cost 120 million colones. It is in line with a new orientation whereby minors, regardless of sex, will live together in a completely natural atmosphere. The centre has 4 units for males and 1 for females, distributed as follows: one for women, one for young convicted men, one for young pre-trial male prisoners and one mixed unit, where both convicted and non-convicted individuals whose behaviour is peaceful, usually minors under 15, will live together.

572. The administrative phase of licensing is now ongoing for the construction of a new penal centre with a capacity of 790 to 1500 prisoners, with approximately 150 individual maximum security cells. The question of maximum security detainees is one of the most sensitive aspects of the Costa Rican prison system. This project is being carried out through the public works tendering procedure.

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573. The authorities are intending to locate the new maximum security prison in the city of Guápiles, in the province of Limón, on a site of 205 hectares. The construction costs are estimated at 1.5 million ($4,854,368). A number of international companies have already shown interest in the project, including Cornell Corrections Inc., Civigenics and Wakenhut Corrections from the United States, Argón Internacional from Spain and Group 5 from Puerto Rico.

574. It is a priority for the prison authorities to have a maximum security prison. The maximum security wing at La Reforma has 44 cells and over 350 people sentenced to terms exceeding 25 years. The existing practice of the authorities with people in this sector of the prison population is to transfer them to other prisons when there are serious problems of coexistence, so that many of these convicted person are mingled with the rest of the prison population, which is "a danger", as the Director of Social Adaptation has said.

575. The prison project at Guápiles will have two units. In one of these modules will be built for about 1,200 "medium" risk offenders. At the other extreme will be the 300 maximum security cells. A curious detail is that the companies would be responsible for any escapes. Apart from the economic penalties they would suffer for each escape, they would have to reimburse the State for all the costs incurred in tracking the escapees.

576. According to the timetable published in the press, the contract for the project should be awarded in June 2000. The construction is expected to take between 10 and 12 months. The prison should have a useful life of 20 to 25 years, and when the investment has been recouped, it will become the property of the Ministry of Justice.

577. All these efforts on the part of the Ministry have been acknowledged by the Office of the Ombudsman in its 1999 report, which states that in spite of the serious overcrowding problems evident in Costa Rican prisons, and their harmful consequences, "we are aware of the interest shown by the Ministry of Justice in securing more funds for this institution, by applying to the judicial authorities and international agencies for economic cooperation. The country's prison system urgently needs financially sustainable projects in line with a clear and defined policy rooted in respect for human rights."

Grouping criteria in the prison system

578. As regards the criteria used to group prisoners, Costa Rican Law, through Decree No. 22198-J, the Organic Operational Regulation of the General Directorate of Social Adaptation, has laid down the criteria and procedures to decide on where the detainee population should be held.

579. In this regard, article 72 of the Regulation states: "Article 72: Criteria for placement. The Assessment Board will decide where each detainee is to be held, on the basis of : 1. The accommodation capacity, both within and outside the prison premises. The accommodation capacity will be defined in the light of the individual prisoner's adaptation to the Technical Care Plan, which must show the response to each of the relevant areas. In this regard, special attention should be paid to the relationship between the prisoner and his prison companions and the staff of the institution, and with his family, the victim, his neighbours and the community in general. 2 The degree of physical or technical containment, or both, which is required. The need for physical containment must be assessed in close connection with the technical containment required by the prisoner. The institutional, semi-institutional and community levels of care offer different containment options. Containment involves creating

the necessary conditions for prisoners to fulfil their technical containment plan during their term of imprisonment .."

580. In the prison system there are isolation cells which are used solely as an exceptional method of prevention and a temporary solution in situations of imminent danger to individuals or to the institution. In order to apply this precautionary measure, written notice must be given ahead of time to the prisoner. Any period of isolation exceeding 48 hours must be approved by the criminal review court, as required by article 458 of the Code of Criminal Procedure.

581. In the case of juvenile detainees, the detention centres possess a cell for exceptional use, which is used if a young detainee is at personal risk or is endangering other young people or the operation of the institution. These precautionary measures are notified to the criminal review judges and to the Office of the Ombudsman.

582. Prisoners retain all the rights conferred on Costa Rican citizens by the constitution, except the right of free movement, which implies that they retain their legal capacity with all the rights and duties inherent in it, as for example the right to vote in an election.

583. Complete privacy for inmates in the physical space available in Costa Rican prisons is extremely difficult, for economic as well as physical reasons; these factors mean that it is not possible to give each inmate his or her own space, and even if it were, for reasons of security in each centre such a space could not be private and inviolable, since operational entry or searches have to take place from time to time within the prison to detect the presence of drugs, weapons or other forbidden articles. However, as far as possible attempts are made to give some degree of privacy to the inmates through public telephones and correspondence, which ensures that their communications are private, as the Law requires.

584. As regards privacy of communications, guaranteed in article 24 of the Constitution, the Constitutional Chamber has stated in decision No. 179-92 of 24 January 1992 that "II. Contact with the outside world, a basic right for a person deprived of liberty, follows directly from the right to communication and information and the right to freedom of expression which is zealously safeguarded by our constitution .. In order for a detainee to enjoy a full guarantee of the ability to communicate with the outside world, it is necessary to establish as a minimum family visits, the free exchange of correspondence with due respect for its intimate character, the rational use of the telephone, with the right freely to receive and make calls in emergencies, the right to receive one's Lawyer and to keep oneself informed about what is going on in the country and in the outside world."

585. On the other hand, the only persons under restrictions as to their movements within the prison are the maximum security prisoners, who have only one hour outside their cells; other inmates may move around their wings freely from 6 in the morning until 9 in the evening.

586. In the Costa Rican prison system, convicted prisoners are separated from those undergoing trial. For this purpose they are kept in different locations, but in shared establishments. The great majority of indicted persons are kept in an establishment in the country's capital, housing a total of 1121 indicted persons as of May 1999.

587. The Costa Rican authorities are aware that the proper functioning of a prison system is based on an appropriate classification method whereby the prison population is placed in groups according to profile, and suitable technical and security programmes are devised to establish order, discipline and adequate care.

588. Persons undergoing trial have the same rights and duties as convicted prisoners. The only difference lies in their legal status, since the respect due for the principle of innocence means that those undergoing trial are not given technical attention in areas such as violence and treatment for drug addiction, until they are convicted.

589. The pre-trial prisoners are kept separately from the convicted prisoners in the following detention centres: The Good Shepherd Centre, the San José Centre; the Pérez Zeledón Centre; the Puntarenas Centre and the San Ramón Centre. The two categories are kept together in the following centres; La Reforma; the Limón Centre; the Cartago Centre; the Heredia Centre; the Liberia Centre and the San Carlos Centre.

Medical services in prison

590. The Special Protection Department of the Office of the Ombudsman, in its report for 1997-1998, mentioned a series of problems which affect the Costa Rican prison system.

591. In the health sector, the main complaints referred to the poor standard of medical attention received by inmates in the prisons and the delay in being attended to in health centres and hospitals. The problem of lack of resources in the prisons means that medical sessions are programmed and that inmates are seen by doctors from the national EBAIS programme (Basic Integrated Health Care Teams) who do not always have the resources and the time needed to attend in person at the prisons, which directly affects the service provided and the rights of individuals. This economic restriction also impacts on the provision of specialist psychological and psychiatric services. The problem of medical care is made worse by the infrastructure conditions prevailing in many of the country's prisons.

592. The medical services provided in the prisons derive from the agreement signed in 1980 between the General Directorate of Social Adaptation and the Costa Rican Social Insurance Fund (CCSS). This agreement underpins the provision of medical services and specialties for prisoners in the various hospitals and clinics funded by the national social insurance scheme.

593. This agreement requires the CCSS to provide treatment and make its clinics and hospitals available for the care of prisoners and their relatives to the first degree of propinquity. For its part the Ministry of Justice, through the General Directorate of Social Adaptation, takes care of the infrastructure, pays for the staff, presently consisting of 56 health sciences professionals, and buys equipment.

594. In 1996, the Ministry of Justice invested a sum exceeding 75 million colones ($242,718 dollars) in medical care for detainees. The monthly outlay is presently 400 million ($1,294,498 dollars) of which 130 million are reimbursed through payments to the CCSS.

595. In spite of the large sums invested in health, former prisoners taking part in the "Listen to your Voice" project of the Latin American Institute for Prevention and Health Education) which will be explained below, have condemned certain practices which, they say, "undermine the dignity of prisoners, such as bringing them to hospital in handcuffs, keeping them in handcuffs while inside, transferring them to hospital in prison vehicles and refusing permission for home leave in family emergencies." [44]

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[44] Interview with former prisoners, ILPES, 27 July 1999.

596. In the light of the statements by former prisoners, the Social Adaptation authorities say that the question of handcuffs has to do with security, and as for transfers, these are usually carried out in prison vehicles and under guard because the Red Cross does not take responsibility for taking prisoners to health centres. In recent years there has been a major change in the fleet of vehicles, and almost all penal establishments have vehicles which are used for emergencies of this kind. In addition, in 1998 the Government was given a special vehicle for transporting patients, which is usually kept at the La Reforma centre.

597. Some prisons have doctors working on a staff basis, as in the case of the Cartago centre, which has a nurse and a doctor; the Heredia centre, which has a psychiatric specialist in attendance three times a week; and the San José centre, which has a general doctor, a dentist and a psychiatrist working on day and night shifts and on alternating schedules.

598. The La Reforma centre also has a clinic with a number of general doctors, psychiatrists and dentists, who have the daily care of prisoners in the various wings of the prison. Thanks to a donation of equipment by the Sovereign Order of Malta, this clinic is able to provide post-operative treatment to young male prisoners. It also has a pharmacy and a special ward for treating contagious diseases and AIDS patients. It is about to open a surgical ward.

599. Only the La Reforma, San Sebastián and Heredia centres have doctors with psychiatric and dental knowledge able to treat prisoners, as required in rule 22 of the Standard minimum rules for the treatment of prisoners. These professionals have to deal on a daily basis with problems of self-harm which are due frequently to drugs, but chiefly to depression and anxiety.

600. The other centres do not have specialists in this area, so that a prior assessment is necessary by the doctor treating patients at the centre for them to be transferred to the Social Security clinics, or treated as out-patients at the hospital for the locality.

601. The Juvenile Training Centre at Zurquí also has a doctor and a dentist visiting the institution once a week, and an auxiliary nurse available on the 5 working days of the week. The centre also has a consulting room equipped for each professional, a wheelchair and sterilizing equipment. In coordination with the Costa Rican Social Security fund, medical services in orthopaedics, laboratory tests, dentistry, pharmacy and general medical care are made available when the institution's doctor is not in attendance. In the case of the Young Adults Centre, the inmates have access to the La Reforma clinic.

602. The health sector in the prisons has been one of the most sensitive aspects mentioned in the various reports of the Office of the Ombudsman. As already explained, the authorities have undertaken a range of measures to improve the service, but there is still much to be done. As the report of the organization for 1999 states, "the health facilities in the Institutional Centres lack proper infrastructure to provide an adequate service .. either to prisoners or to staff."

603. A report in La Nación entitled "Cárcel enferma de gente" (A prison sick with people) which appeared on Sunday 3 October 1999, reviewed the problems with the health system in the prisons. The problems of overcrowding in prisons have led to a proliferation of respiratory and digestive disorders, skin diseases, psychological disorders and sexually transmitted diseases.

604. The most recent case occurred during the second fortnight of November 1999, when an outbreak of German measles was notified in the admissions unit at San Sebastián. This

compelled the prison authorities, among other things, to prohibit the entry of children and of pregnant minors.

605. The figures show that 40% of the population (2,400 prisoners) are suffering from digestive disorders such as gastritis, colitis and ulcers; about 20% (1,200 prisoners) suffer from acute respiratory infections; 20% suffer from fungus infections; approximately 95% of the population smoke and 90% use drugs; over half develop some depressive syndrome; about 780 prisoners have diabetes, hypertension or cardiovascular diseases, and the main sexually transmitted disease is syphilis. At present 21 detainees are being treated for this.

606. As for medicines, these are dispensed by the Costa Rican Social Security Fund. When prisoners require special examinations or X-rays, these are carried out in local hospitals and clinics. All the penal centres keep medical files on every inmate. The medical file records the number of the individual detainee and the occasions when he or she has been seen by the centre's doctor, his or her state of health and the reason for the medical visit. A check also takes place on persons with infectious or contagious diseases, and on the treatments prescribed to eradicate or cure them.

607. In the case of women detained in the Good Shepherd Institutional Centre, there is a doctor who is a specialist in gynaecology to attend to those who are pregnant. During childbirth they are cared for at the Dr. Adolfo Carit National Women's Hospital, which is a hospital centre of the Costa Rican Social Security Fund.

608. Other measures adopted by the prison authorities to improve the health service in the various prisons include: appointing a doctor from the Ministry of Justice to attend on three days a week at the Pococí Centre and two days at the Limón Centre. These two Centres previously had no fixed hours for medical visits, and were effectively dependent on the local EBAIS teams. [45]

609. The problem of transporting people to medical appointments previously arranged with specialists in hospital centres, the confusion in the paperwork, the bureaucratic delays and the failure to comply with orders resulting, in most cases, from a lack of coordination between the officials responsible, are all mentioned in the 1999 report of the Office of the Ombudsman.

610. As regards the care of detainees suffering from a mental disorder, the 1999 report states that no action to solve this problem has been noted. "The daily lives of such people, who are imprisoned without distinction with the rest of the prison population, is quite deplorable. They do not receive any special treatment for their condition, they are not separated from other ordinary individuals, which results in their being ill-treated, physically and sexually assaulted, and suffering discrimination. Although they are given medicines, they are not given the proper care and therapeutic treatment they require. The problem is made worse by the fact that these individuals are harassed by other detainees and in most cases, supply them with free drugs, which causes their condition to deteriorate further." [46]

611. Before this complaint was made "the prison authorities insisted that the care of these individuals was the responsibility of the National Psychiatric Hospital, but the staff of that hospital objected, saying that the hospital did not offer the necessary degree of security to

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[45] The purpose of the basic integrated health care teams is to provide integrated basic care to the population at large. They consist of a general doctor, a nursing auxiliary, a primary care technical assistant (ATAP), a nurse, a pharmacist, a dentist, a laboratory technician and a social worker.

[46] Office of the Ombudsman, Annual report, 1999, page 134.

house people of this kind, who as well as having mental problems, had a history of offending. This prompted them to require the attendance of security agents from the prison system to guard the persons transferred to the hospital, a difficult situation in view of the shortage of security staff in the prison system."

612. Talks are now being held between the judicial authorities, the Ministry of Justice, the Office of the Ombudsman and the Costa Rican Social Security Fund to find a definitive solution to the problem.

Maternity rights for women prisoners

613. One of the specific aspects of imprisonment in the case of women is the possibility of serving the sentence with their children, if under the age of six. The facility at the Good Shepherd Centre intended for women with children is called the "Casa Cuna".

614. The report of the Office of the Ombudsman for 1999 states that the records nos. 317-21-98 and 305-21-98 contain complaints about the situation of minors in the Casa Cuna. These complaints derive from the existence of a cooperation agreement for operating it between the Ministry of Justice and Pardons and the National Children's Council, regulating the time in which minors could stay in the Good Shepherd Centre with their mothers, from three years to one year. This affected two women who were pregnant at the time when the agreement was signed.

615. Because of the complaints and the maternity needs of the women placed with their children at the Good Shepherd centre, the Office, according to its annual report for 1999, reported to the management of the centre that there was a need for an overall examination of the situation of mothers and their children in a closed centre, a survey which should not be restricted to the age of the children. This suggestion was communicated to the then Deputy Minister of Justice, who set up a commission coordinated by herself to deal with the matter. The Commission was to be made up of the Deputy Minister and advisers and staff from the Women's Legal Defence Office and the management of the Good Shepherd centre, to serve on an ongoing basis.

616. The outcome was the framing of an agreement with the Santa Maria Home to make it possible for minors in the Casa Cuna to be de-institutionalized during the day. This means that children under one year are kept with their mothers all day; from the age of one to the age of three, they attend the Home during the day. This period of time during which the mothers are without their children promotes another institutional objective, to enable the women to follow and complete an institutional care plan covering the areas of education, work, drugs and violence.

617. The agreement has also made it possible to ensure that funds can be set aside for the refurbishment of the Centre and, specifically as regards Casa Cuna, to meet the needs of the children and women. The signing of the agreement marked a transitional period which has enabled the women who made the complaint to keep their children with them up to the age of three.

618. In addition to the agreement, a supplementary agreement has been reached between the National Children's Council (PANI) and the Ministry of Justice, to permit the extension of

the stay up to three years of age when there are technical reasons for it. It has also been agreed to make the necessary efforts to set up a creche at the Good Shepherd centre and to strengthen the links with the Santa Maria Home, in order to offer more options to the children of mothers in prison. When three years have elapsed, children in Casa Cuna who do not have a family on the outside can be accommodated in the Santa Maria Home.

619. "The facts as described indicate that the complaint made by the women is being solved by adopting new regulations on the length of stay of minors at the Centre; however, it is important to point out that in the view of the Office of the Ombudsman, all the aspects relating to Casa Cuna and specifically to the age for staying there, must be set down in a single legal instrument." [47]

The right to a sex life in prison

620. As regards the right of young detainees to a sex life, in March 1995 the Public Prosecutor's office issued a non-binding opinion which confirmed the right of "all minors deprived of liberty; i.e., those who are in prison and who are between 15 and 18 years, do have a right to sexual relations with their partners". [48]

621. The essential requirements to be met by the minor in this case are: to be over the age of 15, to be in a couple relationship - called a de facto union - and to have the consent of one's parents. Concerning the two latter requirements, the following should be taken into account: according to the Code of the Family, the de facto relationship must be public and a matter of common knowledge, a single and stable union for over three years, and its existence must be demonstrated, and there must be consent by the parents of the minor in the exercise of their "parental authority" to sanction the relationship.

AIDS in the prison system

622. Inmates with AIDS in Costa Rican prisons enjoy the same rights as the remainder of the prison population which is unaffected by this disease; they receive the same medical care in the centre's consulting rooms and, if necessary because of the development of the disease, they are transferred for treatment to the Social Security hospitals and clinics.

623. The authorities of the prisons are fully aware of the identity of the prisoners suffering from AIDS, but in accordance with a ruling of the Constitutional Chamber stating that no discrimination is permitted against such persons, prison staff are not permitted to disclose their names and their state of health to the prison inmates, in order to protect their human dignity.

624. In order to care for and treat AIDS patients, a special commission has been set up within the prison system to provide medical care for prisoners who require it, and to carry out preventive work through information.

625. It should be noted that in previous years, the General Directorate of Social Adaptation contributed to the prevention of the disease, distributing condoms to the prison population to avoid infection. At present, for budgetary reasons, none are being distributed.

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[47] Office of the Ombudsman, Annual report, 1999, page 89.

[48] "Derecho sexual a reos jóvenes", (sex rights for young prisoners), La Nación, 25 March 1999, page 11 A.

626. Unfortunately, the limited infrastructural facilities at the present time place AIDS-infected prisoners at a disadvantage in comparison with the rest of the prison population, since because of their immunological condition, they are prone to catch any virus in the environment. Thus the poor conditions generally found in the sanitary facilities and the lack of hygiene in the prisons can result in serious health problems, both for them and for the other inmates.

627. At the III Meeting of Ministers of Justice and Government Attorneys of America, held at San José, Costa Rica, from 1 to 4 March 2000, experts from the Latin American Institute for Prevention and Health Education (ILPES) described the AIDS situation in prisons in Latin America and especially in Costa Rica.

628. According to the data given, "Costa Rica, without escaping the problem, has kept the percentage of the prison population suffering from the disorder to 1.5 per cent. At present, 94 inmates have the disease and 16 have died in the past 5 years." [49]

629. For the experts, the key to reducing transmission of AIDS in the prisons in Costa Rica has been allowing inmates to receive help through workshops in which absolute confidentiality is guaranteed. Where prisoners are incorporated into programmes, it is easier to ensure that safe sex is practised, since the high rate of homosexuality in the prisons is undeniable.

Work in the prison system

630. The prison system is not merely a punitive affair. The system must offer each inmate an opportunity to train and to use the time in prison to prepare for employment. In this sense, the industrial workshops at the La Reforma Centre have been converted to an alternative format so that prisoners are able not only to reduce their sentences, but also to undergo therapy.

631. Regarding the practice of amortizing a sentence, article 55 of the Criminal Code states that "the Institute of Criminology, following a study of the psychological, psychiatric and social characteristics of an inmate, may authorize a convicted person who has served at least half the sentence, or a pre-trial prisoner, to discount or reduce the fine or penalty of imprisonment which remains to be served or which is imposed, by working for the Government, for independent State institutions or for private industry. For this purpose, one day's ordinary work is the equivalent of one day's fine, and every two days ordinary work are equivalent to one day's imprisonment."

632. The difference between ordinary work and work done by prisoners is that the latter is done as part of an "institutional treatment", since the work of inmates is based on a special regime which is aimed primarily at the rehabilitation of the convicted person. This has been explained by the Constitutional Chamber in saying that work in prisons has a reforming and corrective purpose, to which is added an economic purpose as an effective means of preparing the person deprived of freedom for re-entering society.

633. On this point, the Constitutional Chamber stated that "the work regime sanctioned by article 55 of the Criminal Code and the prison regulations is not equivalent to the work done by other citizens, because it is an incentive with a view solely to rehabilitation, and does not fulfil the requirements posed by the Labour Code for the employment relationship to exist, so that once the sentence has been completed, neither the convicted person nor the firms taking

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[49] "Menos SIDA en las cárceles nacionales", La Nación, Friday 3 March 2000, national news, page 8A.

part in it can be required to continue working or to provide compensation for the termination of the relationship when the inmate's treatment is concluded ". (decision no. 828-91 of 30 April 1991).

634. Another decision, no. 6829-93 of the Constitutional Chamber, stated that "Prison work, as has often been said, has a mainly reforming and corrective purpose, to which the economic purpose is an addition. It is perhaps the most effective means of rehabilitating the prisoner and preparing for his re-entry to social life, and should not be seen as a source of distress, but as an important factor of re-education and reform."

635. In its report for 1999, the Office of the Ombudsman referred to the need to provide insurance cover for the occupational risks incurred by the prison population. It states "for the very reason that some accidents of this kind have occurred in prisons. It is clear that these situations may lead to partial or permanent incapacity which would obviously leave such people without protection."

636. However, in spite of the finding that there is no employment relationship, the employer is obliged to respect all the constitutional rights of the employee. That being so, the General Directorate of Social Adaptation has taken out an employment insurance policy for detainees with the National Insurance Agency.

637. The benefit conferred by article 55 of the Criminal Code and the prison regulations, according to the Constitutional Chamber, extends not only to work as such but also to study and to group activities, for instance in religious groups.

638. The benefit of reducing a penalty through work has been defined by the Constitutional Chamber in its decision No. 6829-93 of 24 December 1993: "Article 55, in providing for the benefit of a reduction of the sentence or fine, is not unconstitutional, but it is the administrative practice to grant it to pre-trial prisoners to the same extent as to convicted prisoners.. The National Criminological Institute must refrain from authorizing this benefit in such a way as to prevent the court which dealt with the case or the President of the court which issued the verdict from making appropriate variations to the penalty initially awarded."

639. The La Reforma centre has wood and metal workshops and a plant producing blocks, terrazzo and paving slabs, in which about 60 detainees are currently working. The prison's workshops have become an economic outlet for making and repairing desks for many of the country's schools. The inmates receive payment or an average incentive of 14,000 colones ($45.30) a month, and also generate income which is sent to the Construction Service of the Ministry of Justice.

640. In general, work in the prison system has its own characteristics: some tasks take up a working day of more than eight hours, others less than the normal working day. The idea is that the inmate is always occupied with some task or other; according to official estimates, 80% of those in the prisons are occupied, and as explained above, they receive pay ranging from 3,000 to 18,000 colones, depending on the kind of activity they are carrying on.

641. The Costa Rican prison system has also organized agro-industrial projects, producing supplies not only for the prison system, but also for sale. It also has plantations of coffee, papaya, plantains, yucca and vegetables, among others, and also pigsties, poultry farms and livestock for fattening.

642. Mr GZM and Mr JCE are examples of this working pattern. The former has been at La Reforma for 12 years. He is presently working in the cabinetmaker's shop from 8.30 in the morning to three in the afternoon, and then makes craft products until nine in the evening. By carrying out these tasks, he is helping his family, learning a trade and making his time in prison easier. JCE, who is under a regime of trust, has been working for six months in a building block factory in the city of Heredia. For the work he does, he receives a weekly income of 11,000; he is also able to sleep at home every Saturday in the company of his partner and his daughter.

643. In May 2000 four industrial workshops were opened in the prisons at Pococí and Limón. In these two centres there are two industrial workshops, one for wood processing which makes desks, doors and other items of furniture, and a second producing concrete products, making building blocks, sewage pipes and concrete posts for fencing. It should be noted that the workshops were built by the inmates and prison staff themselves, at a cost of 190 million ($614,886) for the construction and 15 million ($48,583) for purchasing the machinery.

644. As for the work done by the detainees, on 23 February 2000 a total of 70 detainees were working in the workshops, engaged in making casing, purses, games, envelopes, postal packaging, spoons, folders for brochures and medical prescription pads, and making and packing articles for children's parties.

645. Other activities take place as well, such as cutting out and sewing uniforms for the Ministry of Public Security under an inter-agency agreement, which is not yet operational, and the manufacture of licence plates for cars. These activities are covered by an employment protection policy.

646. There are also the tasks assigned to the institution under the rubric of general services, in which 60 detainees engage in miscellaneous duties for the various facilities in the centre: in the general kitchen and the dining rooms, the internal switchboard for the various public telephones, supervisory duties in the workshops, sporting and cultural activities, work in the library and the store (a kind of small supermarket). These activities are likewise covered by an employment insurance policy with the National Insurance Agency.

647. In financial terms, in the course of 1999 the productive projects generated income of 75 million in the industrial sector for the national prison system, and 45 million on the agricultural and stockbreeding side.

648. Article 25 of the new Code of Criminal Procedure has also introduced the device of "parole" which has enabled many victims to recover property lost through crime, and has also benefited communities which now have free manpower at their disposal. The article states: "25: Justification: In cases involving a conditional suspension of the penalty, the accused may request parole. The request may contain a plan for repairing the damage caused by the offence and a description of the conditions which the accused is prepared to fulfil according to the following article. The plan may consist of a settlement with the victim, material reparation of the damage caused or a form of symbolic reparation, either immediate or effected in stages."

649. This option, which applies only to minor offences, according to article 26 of the same instrument, cannot be less than two years or more than five, and those covered by these provisions so far total 2,400 persons, who are carrying out community service throughout the country. The contribution of these offenders has benefited schools, State companies, Catholic churches and even the municipal police of San José, where many officials are

trained by a former deputy minister of Public Security, who agreed to train municipal police forces to avoid being sentenced for the illegal expulsion from the country of four Venezuelan robbers in June 1994.

650. There is a special situation prevailing with aliens who wish to benefit from article 55 of the Criminal Code. In practice, generally speaking aliens in Costa Rican prisons do not have up to date identity documents, and this prevents them from working because the Migrants Office and the Ministry of Labour reject their applications as coming from illegal entrants. On this point, decision 4299-95 of the Constitutional Chamber states that "the migration status of aliens deprived of their liberty is not among those defined in the General Law on Migration and Aliens, but they are not considered to be illegal aliens in the country because their stay on the national territory becomes legal by virtue of their sentence".

651. However, from a legal point of view this decision has the limitation that permission to work, granted in the positive ruling by the National Criminological Institute, does not mean that conditional freedom is granted through the inmate being resident within the prison. In this connection the Constitutional Chamber decided that "the starting point is that the employment relationship of the inmate is no different from others except insofar as - though this does not in itself undermine the employment relationship - when the benefit of article 55 of the Criminal Code is conferred, nights have to be spent in a centre of social readaptation."

652. Up to December 1999, 325 persons had been doing communal work in San José, 160 in Alajuela, 139 in Pérez Zeledón, 213 in San Ramón, 224 in Cartago, 95 in Heredia, 239 in Guanacaste, 96 in Puntarenas, 117 in Ciudad Neilly and 230 in Limón, among other communities.

653. The success of the alternative measures introduced has prompted the Ministry to relaunch its work, and it is now studying ways and means of creating new and real conditions of work for offenders. These will be specific projects to be executed in collaboration with communities such as Guatuso and Upala in the northern part of the country, where manpower is needed to protect water resources.

654. As for the working environment for young offenders, both male and female, there is a series of workshops, including welding, craft and agricultural workshops, provided in collaboration with the National Apprenticeship Institute, which also provides the instructors. The young people receive an incentive payment for their work, and are covered by the employment risk insurance taken out jointly by the Ministry of Justice and the National Insurance Agency.

Education in the prison system

655. With a view to providing all-round care for prisoners and their families, the Minister of Justice has entered into an agreement with the Minister of Education to offer study awards to children of prisoners and security agents. These awards will be given to the children of agents with limited financial means and a good work record, and to the children of prisoners of good conduct and young offenders.

656. On the educational level, approximately 1321 detainees are following courses of study thanks to cooperation programmes with State universities. According to figures supplied by the General Directorate of Social Adaptation, there are 424 detainees studying in the first and

second cycles, 257 in the third cycle, 259 in school leaving courses, 57 in higher education and 324 in literacy courses.

657. During 1998, 538 convicted prisoners obtained degrees. The Good Shepherd women's prison performed best, with 164 graduates; the Reforma had 106; the San José Admissions Unit and the San Sebastián had 79, and the rest of the country 181. The courses are taught by 16 instructors from the education department of the Ministry of Justice, and a group of teachers from the Ministry of Public Education, working in the prisons for two or three days a week. In the university field, there are tutors, materials and study awards, thanks to an agreement with the State Distance Learning University (UNED).

658. The teaching method used is the Adult Education Programme. The special feature of this system is the opportunity it offers to bring detainees into training, and it is treated as an option for them to gain a reduction in their sentence. According to the records of the Office of the Ombudsman, no complaints have been made by detainees concerning the operation of these programmes in the prisons.

659. The semi-institutional and community levels are served by another route, the technical assessment boards and the community education offices. In these cases, a detainee wishing to pursue his or her studies makes a request to the board, and if the request is accepted he or she will become a regular student in the community educational institution.

660. As for education for young offenders, two centres - Zurquí and Reforma - provide programmes for the first, second and third cycles of basic general education. There is also a programme for young people and adults called ICER-MEP.

661. The Zurquí Juvenile Centre has four teachers, two provided by the Ministry of Education and the other two by the Ministry of Justice. As well as formal education, they are given sessions on personal growth and in manual and other activities to assist in the personal development of young prisoners.

662. The local newspaper Al Día has published a series of reports on the prison system in Costa Rica, and one of these is called "Captive Students", recounting the case of two detainees who have taken up university studies and are about to graduate. It mentions the case of the young man Ronny Alfaro, who is serving 20 years in prison for the death of a man. "Alfaro has served five years of his sentence, and in spite of the difficulties he faces in prison, his life changed radically from the moment when he began to study. This convict took up Business Administration with an emphasis on banking and finance, a profession which he says will enable him to work "honourably in a bank" when he is discharged. He is one of the best students at the La Reforma prison. His marks are in the 90s, and he has won the admiration of his companions and teachers at the State Distance University (UNED)" [50]

663. Unfortunately, in spite of the efforts of the justice authorities, there is a shortage of educators and new programmes to stimulate the prisoners, who total 8,100. In spite of the success of the education programme in 1999, more funds and more instructors are needed for the prisons outside the capital. The prisoners serving a sentence in Limón or Puntarenas, for example, do not have the same opportunities. To resolve this situation, the authorities of the Ministry of Justice have entered into negotiations with the Ministry of Public Education, with the aim of assigning more teachers to prisoners outside the Central Valley.

The prison system for adults

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[50] "Capturados por el estudio", Al Día, January 2000.

664. As regards the treatment of adults by the prison system, on 1 November 1999 the authorities of the Ministry of Justice inaugurated the new Institutional Centre for Adults located close to the La Reforma Centre. This centre, with a capacity of 120 persons, will replace the former adult prison located at Santa Domingo de Heredia. This new centre is situated on a site of slightly over one hectare, and consists of wings each with a capacity of 40 persons, laid out to provide appropriate facilities, with dormitories, baths, sanitary provision and a recreation room.

665. The centre also has workshops, garden areas and even a special area for meetings of Alcoholics Anonymous. It is served by specialist staff, including three professionals skilled in dealing with third age clients.

666. This centre has been built to provide considerable privacy for each prisoner: the dormitories have beds for each person and a space for each prisoner to keep his or her own belongings. With the atmosphere of trust which prevails in this centre, some prisoners have said that it is a place "where we can keep our own things in the middle of everyone". [51]

667. At present there are 80 people at the centre, most of them convicted for sexual offences and international drug trafficking. The aim of the prison authorities is gradually to transfer the adult detainees to the various prisons in the country.

668. For the inmates, transfer to these facilities has meant an important change in their lives, and this is reflected in the newspaper report, since it enables them to enjoy greater freedom and tranquillity. For the inmate GC, "The new centre enables them to live more peacefully and more as we would like, because all of us think much alike at our age."

669. As for daily life in the Costa Rican prison system, it continually throws up examples of overcoming challenges. Some inmates, such as LM and AM, are proud of being able to engage in various activities. In the case of LM, in a few days he has converted what was a rubbish area into a large garden, with various species of plants. By his own efforts and those of his companions, LM has managed to clear the site and sow the first plants of the garden which will soon be his pride and joy. On his part AM, who is reducing his 20 year sentence, uses his natural skills to pass the time making wood articles in one of the centre's workshops.

670. The adult prison population grew by 64% between 1996 and 1999. Of these, scarcely 10% are re-offenders or older offenders.

Patterns of employment in the police

671. One important aspect to be borne in mind is the stability of the country's police forces, especially the civil guard and the rural units, who are the most exposed to electoral changes. Since the abolition of the Army in 1949, the alternating employment of police officers has become a damaging practice every four years resulting from the changes of government, especially when there is a change from one of the main political parties to the other.

672. Following the adoption in 1994 of the General Law on the Police, the present Police Statute was introduced, and it provides a gradual measure of stability for the police in Costa Rica. The mechanism used was to place on a regular footing 25% of the officers in each of the four Governments following adoption of the Law. At present the second incorporation is

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[51] According to the Italian Umberto Bucci, "Funciona nuevo centro penitenciario", La República, Monday 1 November 1999, page 8A.

in progress, so that by the year 2002, when another change of government will take place, 50% of police officers will be in regular status.

673. The Law on the Establishment of a National Coastguard Service was recently adopted; this is the first professional organized body within the Ministry of Public Security. This new police unit is a departure from the traditional pattern of alternation of staff on each change of government. The Law raises the recruitment requirements, insists that middle-level and senior officers have professional qualifications in line with their specialized area of work, and confers legal personality on this police unit so that it enjoys administrative independence in administering its domain.

674. The other police forces, such as the prisons and the Judicial Investigation Department, are not so exposed in their organization and operation to electoral changes. On the contrary, the Legislative Assembly is presently considering a draft Law called "Employment Statute for the Judicial Investigation Department".

International cooperation in training

675. As explained above, Costa Rica does not receive any direct support from non-governmental organizations in training the police. However, institutions such as ILANUD, UNDP and the University for Peace provide support in the theoretical field through talks and meetings.

676. Costa Rican governments have signed training agreements with police forces in various countries, the most recent being the training provided by Chilean police officers and Spanish riot police.

677. In the case of the Chilean police, the provides partial awards to enable Costa Rican police officers to follow police training courses and university diploma courses on legislation and citizens safety. For its part, the Spanish national police, through a cooperation programme, has sent a detached officer to Costa Rica to take part in training. In addition, December 1999 saw the completion of a one-month training course for 160 members of the police force, with an emphasis on handling groups.

678. Within the context of international cooperation, the Costa Rican police authorities have begun to reverse the situation through training offered by the National Police Academy to the National Police of Haiti.

679. Costa Rica has provided significant institutional support in Haiti since the process of return to democracy got under way, initially through training in holding elections, and now through police training for three members of the Haitian police, who will exercise a multiplier effect.

680. The members of the Haitian police were properly trained in areas such as policing techniques, law, human rights, domestic violence and dealing with adolescents.

Article 11

681. Article 40 of the Constitution clearly states that "No one may be subjected to cruel or degrading treatment or to life imprisonment, or to the penalty of confiscation. Any statement obtained by means of force is null and void " (emphasis added). The Constitution is quite explicit in forbidding the police to resort to violence in order to obtain a statement. Everyone

has rights simply by virtue of being human, not only because of living in a democratic society with a political system which confers them.

682. The domestic legal order has scrupulously ensured that persons whose rights are under threat have the opportunity to require the judicial organs to safeguard or re-establish the lawful situation. In this context, article 48 of the Constitution provides the remedies of amparo and habeas corpus, two key instruments in protecting the dignity of the individual.

Constitutional remedies

683. The Constitutional Chamber has the primary function of ensuring the protection of the fundamental rights embodied in the Constitution and the effective application of its precepts. This Chamber is responsible for protecting and preserving the principle of the supremacy of the Constitution, which provides that no rule, treaty, regulation or law in Costa Rica's legal system may be more important than the Constitution itself. This principle is defended mainly through the following remedies:

Habeas corpus

684. The remedy of habeas corpus is based on article 48 of the Constitution, which guarantees personal freedom and integrity; this means that nobody may be deprived, without just cause, of his freedom of movement and residence or of the right to enter and leave the country. Any person may bring habeas corpus proceedings without any need for a legal adviser or representative. Any person may bring such proceedings on his own behalf or on behalf of another person.

685. The remedy of habeas corpus has a dual status. It constitutes a procedural guarantee, by providing a procedural means of protecting the right to physical freedom and the right of movement; and it is also a fundamental right inherent in the human person. This dual status is reinforced by the provisions of article 7, paragraph 6, of the American Convention on Human Rights, which, in addition to providing for this procedural means, stipulates that this remedy may not be restricted or abolished in States parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the Lawfulness of such threat. In other words, a State in which the Convention is in force may not impair the conditions under which habeas corpus is regulated in its legislation, for it must constantly seek to expand the scope of the protection and may never allow it to slip backwards.

686. Although this remedy is designed to protect the right of physical freedom and the right of movement, in fact, the doctrine and comparative legislation have expanded the extent of the cover by distinguishing between the following cases: **a) restoration**: the purpose of this type of remedy is to restore freedom to those citizens who have been unlawfully deprived of it owing to a failure to proceed in accordance with domestic legislation; **b) prevention**: here the purpose is to prevent threats of deprivation of personal freedom, including arbitrary threats; **c) amendment**: here the purpose is usually to change the place of detention, either because it is not suited to the nature of the crime, or because the detainee is being subjected to improper treatment; **d) restraint**: here the purpose is to put an end to improper harassment of an individual by the judicial or administrative authorities or the obstruction of his access to public or private areas.

687. In Costa Rica's legislation, in addition to being expressly recognized in article 48 of the Constitution, habeas corpus is designed, according to section 15 of the Constitutional

Jurisdiction Law, to guarantee personal freedom and integrity against the laws or omissions of authorities of any kind, including the judicial authorities, and against threats to such freedom and any unlawful disruption or restriction of the right to move about in the Republic and the right of free residence therein, as well as the freedom of entry and exit.

688. Seen in this way, the broad scope of the legislation enables the constitutional courts to exercise full control over any law or omission which, currently or in the future, may restrict or threaten to restrict any of the rights protected by the Constitution. It has been argued in this connection that *habeas corpus* has evolved in Costa Rica from a means of protecting the freedom of movement (restorative *habeas corpus)* to a guarantee of the principle of legal protection, which also operates today as a means of preventing possible violations of that freedom (preventive *habeas corpus*).

689. It is essential to draw attention to the progressive development of the international human rights instruments by Costa Rica's domestic courts. For example, the courts admitted proceedings of *habeas corpus* for amendment purposes in respect of a violation of the rules of international Law currently in force in the domestic jurisdiction. Decision No. 199-89 held it to be a remedy against violation - *inter alia* - of article 8, paragraph © of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

690. It was held that if the detention was not the result of a sentence imposed on the person concerned, or if he had not been brought before a court, "but was merely the result of the issue of a deportation order because the Directorate for Migration and Aliens had ordained his deportation ... his detention in a facility of the prison system intended for charged offenders but in fact also used to house convicted criminals violates the rules cited by the plaintiff and that the lack of any special detention centres is not an admissible excuse, a consideration which applies with even greater force to the claim that such places of detention are more appropriate for the detainees, for the case concerns fundamental human rights which cannot be violated under any pretext: it is obvious that the detention of persons who have not even been brought before a court must be effected under conditions at least better than those under which they are being detained."

691. The Constitutional Chamber has recognized the "principle of self-implementation" of these instruments in two cases: when the implementation rules contained therein do not require any further development in domestic law; or when, if such development is required, domestic law provides the institutional and procedural arrangements (organs and procedures) necessary for the exercise of the right in question.

692. Law No. 7128 of 18 August 1989 amended article 48 of the Constitution to read: "Everyone shall have the right to bring *habeas corpus* proceedings to protect his personal freedom and integrity, and to bring *amparo* proceedings to maintain or re-establish his enjoyment of the other rights embodied in this *Constitution and of the fundamental rights* recognized in the international human rights instruments in force in the Republic. Both these remedies shall be within the jurisdiction of the Chamber referred to in article 10."

693. These proceedings are heard by a special chamber of the Supreme Court of Justice (the Constitutional Chamber), which is made up of seven tenured judges (articles 10 and 48 and the transitional provision). The system is a concentrated one, for the proceedings are heard by a single court. Decisions of the Constitutional Chamber are not subject to appeal, except that they may be supplemented or clarified within three days on the application of a party, or at any time on the Chamber's own motion. An appeal for annulment is admissible in cases

when it is necessary to correct serious errors in the assessment of the facts detrimental to the parties involved.

694. These proceedings may be brought by any person by petition, telegram or any other means of written communication. If telegraphic means are used, they are free of charge.

695. The proceedings are supervised by the president or by an examining magistrate designated by him. The powers of the president or examining magistrate include the power established in article 21, second and third paragraphs, of the Law on Constitutional Jurisdiction, which authorises them to order the injured party to appear or to order an investigation when this is considered necessary in the light of the circumstances, either before ruling on the application or for the purposes of enforcement, if necessary, of a ruling for or against. He may also order at any time any interim protection measures which he sees fit.

696. According to the third paragraph of article 9 of the Law, these proceedings may not be admitted on an interlocutory basis, i.e., without first hearing the arguments of the defendant. This is because the admission of proceedings of this kind might otherwise lead to a violation of the principles of due process entailing financial and legal consequences.

697. Once proceedings have been initiated they may not be discontinued. It has been held that in the case of habeas corpus there is no rule authorizing withdrawal, which is a logical position for the law to take, since this mechanism is designed to protect the most important rights in our legal system - the rights of freedom of movement, physical and moral integrity, and personal dignity.

698. Since what is at stake here is the protection of rights highly valued by society or of great importance for harmonious coexistence in society, the legal system denies the injured party the option of deciding whether the offender shall be punished. Thus, article 8 of the law governing these matters provides that, once an application has been made for intervention by the Constitutional Chamber, the Chamber must act automatically "without the possibility of invoking the tardiness of the parties to delay the proceedings." What is involved here is the public interest in ensuring that, once the Chamber's intervention has been requested, it is not subject to the will of the parties involved in the constitutional proceedings; even against their will, it may hand down a substantive decision, one deemed necessary in the light of the purpose of all proceedings of this kind. (Decision No. 3867-91 of the Constitutional Chamber).

699. The Law on Constitutional Jurisdiction does not address the possibility of bringing habeas corpus proceedings against laws of subjects of private law; this is also true of amparo proceedings, which are also regulated in the Law, in articles 57 to 65. This is because the nature of the habeas corpus remedy is to protect personal freedom and integrity against laws and omissions emanating from any authority of any kind, even judicial, which threatens to impugn or restrict them. It is a recourse against abuse of the repressive powers of the organs of State.

700. The scope of the habeas corpus remedy is defined in decision 1142-94 of the Constitutional Chamber, which states that "as regards threats to the freedom which may be protected by habeas corpus, it is not every threat which has such an effect. It must be specific, grave, certain, present, concrete and imminent, because if it is not it is an uncertain future contingency which cannot cause any violation of this precious constitutional right and therefore there is nothing to be protected by the institution of habeas corpus."

701. The habeas corpus remedy may be applied for by any person through any form of written communication, and does not require authentication. The reasons must be stated without loss of time, deferring for the court's consideration any other matters.

702. The examining magistrate requests a report from the authority stated to be in breach. The report must be furnished within the time limit set by the examining magistrate, which may not exceed three days. At the same time, he may order the stay of any order against the applicant which may result in non-fulfilment of the Chamber's ultimate decision.

703. In the case of persons who have been detained and made subject to the jurisdiction of any judicial authority, without any order being made to restrict their freedom, the examining magistrate may suspend the processing of the application for up to 48 hours. This same act will warn the judicial authority to take the appropriate steps and report on the outcome of the procedures and whether it has made an order for detention.

704. Any restriction on physical liberty which has been ordered by a competent authority and which exceeds the time limits specified in articles 37 and 44 of the Constitution must be imposed through a properly reasoned decision, except in the case of orders to appear or for arrest.

705. The examining magistrate may also order the applicant to appear, or have an inspection made if he considers it necessary, depending on the circumstances, even before making a ruling on the habeas corpus application or for the purpose of execution, if considered warranted, whether the application is found admissible or inadmissible. Interim measures of protection of the rights in question may be ordered.

706. The report of the authority claimed to be in breach must contain a clear explanation of the reasons and legal principles on which it is based and of the evidence which exists against the applicant. If the report is not submitted within the requisite time-frame, the facts invoked to justify the application may be deemed to be established, and the Chamber will declare the application admissible, if lawfully made, within five days, unless it is found necessary to carry out an evidentiary procedure.

707. When a judgement finds admissible an application for habeas corpus the measures attacked in the application will become ineffective, and the applicant will be ordered to be restored to full enjoyment of his right or of the freedom which has been impugned or violated. The responsible authority will be ordered to compensate him for the damage caused, these damages being determined and settled through a contentious administrative procedure as part of the execution of the award, as required by the Law on Constitutional Jurisdiction (articles 25 and 26, second paragraph).

708. Failure on the part of the authorities against whom the remedy is sought to comply with orders made by the Chamber will incur criminal responsibility (articles 71 and 72).

709. In stipulating that a habeas corpus remedy may not be sought against actions by subjects of private law, the Constitution is not making any discrimination, since there is also the remedy of amparo, which is broader in its regulatory scope. The remedy of habeas corpus protects personal freedom and integrity when these are threatened by acts or omissions emanating from an authority of any kind which is liable to impugn or restrict them, all within a system of law such as Costa Rica's. If the Chamber decides that the matter is not one for

habeas corpus, but rather for amparo, it will say so and continue the procedure following the rules for the amparo remedy.

710. According to the records of the Statistics Service of the Judicial Planning Department, between 1994 and 1998 a total of 222 applications for habeas corpus were submitted to the Constitutional Chamber, broken down as follows: 55 cases in 1994; 51 cases in 1995; 37 cases in 1996; 42 cases in 1997; and 37 cases in 1998. The average length of time taken to handle the cases was 21 days.

The *amparo* remedy

711. The remedy of amparo also has its origin in article 48 of the Constitution, which establishes the right of any person to use this remedy to maintain or re-establish his enjoyment of the other fundamental rights embodied in the Constitution (except the right of personal freedom and integrity, which is protected by habeas corpus.

712. In this case, as in the preceding one, the services of a lawyer are not required. According to the Italian jurist Mauro Cappelletti, amparo constitutes the "constitutional jurisdiction of freedom", being a procedural instrument designed specifically to protect those rights.

713. The constitutional right is based on two principles which are initially opposed to each other: authority and freedom. A contemporary Argentine jurist has commented in this connection that "unrestricted authority is the death of freedom, and unrestricted freedom is the death of authority and of freedom itself". It is precisely at this point that the law comes into play by fixing, reasonably and prudently, the limits of this power. Accordingly, both the remedy of amparo and other similar remedies seek an appropriate balance between the two principles.

714. The right to "effective recourse" stipulated in article 25 of the American Convention on Human Rights is transformed into a primary obligation of States parties to this international instrument and requires the consequent incorporation into their domestic systems of legal remedies which satisfy that criterion. In modern times it is not sufficient to have ordinary jurisdictions such as a system of administrative law. The sea of injustices to which an individual is routinely subjected requires other privileged procedural means, even parallel ones, to combat such injustices, and amparo is the most appropriate remedy for attainment of this end.

715. Amparo may be invoked against any provision, agreement or decision and, in general, against any action, omission or simple material law not based on a valid administrative regulation committed by public servants or organs which has violated, violates or threatens to violate any of those rights, as well as against arbitrary actions and acts or omissions based on wrongly interpreted or improperly applied regulations.

716. Amparo is also used to safeguard the human rights recognized in international law in force in our country. This is an important innovation, since there are fundamental rights enshrined in international treaties which are not expressly recognized in our Constitution, such as the right to have a published correction or reply.

717. Proceedings of amparo according to article 57 of the Constitutional Jurisdiction Law, may also be brought against acts or omissions of subjects of private law when they are acting or should be acting in the exercise of public functions or powers or when they find

themselves, de jure or de facto, in a position of power against which the ordinary legal remedies are insufficient or too slow to guarantee the fundamental rights and freedoms referred to in article 2, paragraph 9a) of the Law.

718. These requirements, which are difficult to pin down, mean that this use of the amparo remedy an exceptional one. The Chamber has tended to declare inadmissible breaches of contract or requests for the winding up of a cooperative association in the event of a ban, claims for employment rights or non-fulfilment of a court order concerning shared parental custody rights, where there are other administrative remedies available, for instance; on the other hand, the application will be admissible for refusal to allow membership of a cooperative, for an owner cutting off a tenant's water supply, etc.

719. Unlike ordinary amparo, the remedy will not be pursued if the individual has correctly based his or her claim on statute (article 57 of the Constitutional Jurisdiction Law) even if the law in question is unconstitutional.

720. Where amparo is used against public authorities, article 30 of the Constitutional Jurisdiction Law states that the remedy will not apply in the following cases: a) against laws and other normative provisions, except where they are impugned together with acts for their individual application or when the provisions are automatic rules, such that their precepts become compulsory immediately on promulgation, without the need for any other rules or enactments to develop them or render them applicable to the complainant; b) against decisions and jurisdictional rulings of the judiciary; c) against acts by the administrative authorities pursuant to judicial decisions, provided that such acts are carried out in accordance with the orders of the judicial authority in question d) where the act or omission was legitimately accepted by the aggrieved person; e) against acts or decisions of the Supreme Electoral Court in electoral matters.

721. Given the broad language of the legislation, it would be difficult to find cases in which proceedings may not be brought by this means, except for the cases expressly excluded by law. However, the scope of the legislation is being delimited by legal precedents. For example, it has been held that, while it is true that any misconduct could give rise to a problem of a constitutional nature since the Constitution is the supreme law from which the entire infra-constitutional juridical system is derived, the existence of direct injury to the Constitution is a prerequisite for use of this remedy. Other injuries which may be inflicted on the Constitution, provided that they are indirect, should be dealt with by the courts of ordinary jurisdiction.

722. Article 33 addresses what might be called a quasi-universal right of amparo, i.e., the fact that any person can bring such an action either on his own behalf or on behalf of another person. However, not all violations of the Constitution, no matter how serious, justify amparo proceedings. There must be an injury to a fundamental right and not merely damage to the common interest of guaranteeing legality in the abstract. For example, violation of an organic rule of the Constitution does not authorize an individual to seek to sanction administrative actions as if he were a public prosecutor.

723. Amparo proceedings are heard by the Constitutional Chamber of the Supreme Court of Justice. The application states the act or omission providing the grounds for the action, the right allegedly violated or threatened, the name of the public servant or organ responsible for the threat or injury, and the evidence supporting the allegation. There is no need to cite the constitutional rule which has been infringed provided that the injured right is clearly

specified, except in cases where an international instrument is invoked. If the identity of the public servant is unknown, the proceedings are brought against the Administration.

725. Any third parties who derive subjective rights from the rule or legislation providing the grounds for the action will also be a party to the proceedings. In addition, any person having a legitimate interest in the result of the action is able to appear in it and be heard as an additional party.

726. This remedy is not subject to any other formalities and does not require authentication. The proceedings may be brought by petition, telegram or other written means of communication, and the use of telegraphic means is free of charge. If the application is unclear, so that its grounds cannot be established, or if it does not meet the requirements indicated above, the applicant will be advised to correct the defects within three days. If he does not do so, the action is summarily dismissed.

727. Amparo proceedings are heard by the President of the Chamber or a judge designated by him in strict rotation, and they are handled on a priority basis, so that any other case of a different kind, except habeas corpus, may be postponed.

728. An amparo action does not require any prior recourse and certainly not the exhaustion of administrative remedies. In Costa Rica, amparo is a direct action not necessitating any previous pending case, either judicial or administrative.

729. The mere lodging of amparo proceedings suspends the effects of the laws and other legislation cited against the defendant, as well as the effects of the specific acts which are challenged. This suspension comes into effect automatically and is notified immediately by the fastest possible means to the agency or official against which or whom the proceedings are brought.

730. However, in exceptionally serious cases the Chamber may order the application or the continued application of such legislation, at the request of the government department to which the defendant official or agency is responsible. If such suspension causes or threatens to cause certain and imminent damage to the public interest greater than the damage which continued application would cause to the injured party, subject to any conditions which the Chamber may deem appropriate to protect his rights and freedoms and prevent the impairment of the effects of an eventual finding in his favour.

731. The decision admitting the amparo proceedings accords the defendant authority a period of one to three days to submit its report, and this authority may request the administrative report or the documents containing the details of the case. Such reports are deemed to have been drawn up under oath. Accordingly, any inaccuracy or falsehood will render the official concerned liable to punishment for perjury or false testimony, depending on the nature of the facts contained in his report.

732. Amparo proceedings may serve as a prior pending case (see article 75 of the Constitutional Jurisdiction Law) for the purpose of seeking a declaration of unconstitutionality when the abolition of a particular rule is necessary for the amparo action to be either accepted or dismissed.

733. Apart from this, the Chamber must bar the application if intermediary norms are being challenged at the same time as instruments for execution, or when it decides that the act

impugned in the proceedings may be based on an unconstitutional rule (article 48 of the Constitutional Jurisdiction Law).

734. If the report shows that the application is sound, the application will be declared admitted. If not, the Chamber may order specific information to be obtained immediately, a process which must be completed within three days, along with any evidence which may be essential, and a hearing may be granted to the applicant and the complainant, if two separate persons are involved, and to the public servant or representative, taking certified statements from each. Before handing down its decision, the Chamber may order any other steps to be followed.

735. According to article 51 of the Law on Constitutional Jurisdiction, a ruling in favour of the applicant entails in principle liability for the damage caused and payment of the costs of the proceedings, and payment is made as part of the enforcement proceedings in an administrative court. "It should be noted that the verdict is given without full trial and without the possibility of appeal."

736. A verdict against the applicant cannot produce an award of damages based on the stay of effects; it may only involve an award of costs if the application is deemed "vexatious".

737. The Law does not define a time limit for making a decision in amparo cases. However the general principles relating to official conduct and promptness apply (art. 8), except that these cases are to be handled "on a priority basis", taking precedence over habeas corpus cases. (art. 39 Law).

738. If the decision is executory, the responsible agency or official must comply with it immediately. If this is not done within 48 hours, the Chamber addresses itself to the superiors of the responsible party, and to take disciplinary action the guilty party or parties. After a further 48 hours, it will take proceedings against a superior who has not acted as requested, except in the case of officials enjoying privileged status, when the Public Prosecutor is requested to initiate proceedings.

739. There is no appeal against the Chamber's decisions, except claims for liability. The Chamber's awards may be elucidated or added to at the request of a party, if the request is made by the third day, and of its own motion at any time, including in enforcement proceedings to the extent necessary to comply fully with their requirements.

740. In accordance with article 35 of the Law, an amparo action may be brought at any time as long as the violation, threat, disruption or restriction persists and for two months after its direct effects on the injured party have totally ceased. However, in the case of purely property rights or other rights whose violation can be validly allowed, the action must be brought within two months of the day on which the injured party was reliably informed of the violation and was legally able to bring the action.

741. Thus as a general rule, there are no prescription limits for an amparo action, as long as the violation, threat, disruption or restriction of the fundamental right persists. This rule applies to whatever can be called, in the language of criminal law, "injurious acts with continuing effects".

742. Concerning acts which have immediate effects, the time limit for lodging an action is two months after its direct effects on the complainant have ceased. In this case, there may be cases of acts lawfully consented to, when the injured party has allowed the two-month time

limit to elapse since the cessation of the direct effects, and the act or omission has not been complained of by way of amparo.

743. Prescription of the amparo remedy, where it is not sought in time, will not prevent the law complained of being proceeded against by another means, if the law allows (art. 36 CJA).

744. According to the records of the Statistics Service of the Judicial Planning Department, between 1994 and 1998 4,631 amparo actions were submitted to the Constitutional Chamber, broken down on an annual basis as follows: 779 cases in 1994; 689 cases in 1995; 1,097 cases in 1996; 1201 cases in 1997 and 865 cases in 1998. The average time taken to deal with the cases was three months.

The *amparo* remedy against subjects of private law

745. As an Italian jurist, Norberto Bobbio, has commented, "There is little point in an individual being free in the State if he is still not free in society. There is little point in the State being a constitutional State if its society is despotic. There is little point in an individual being politically free if he is not socially free .. The current problem of freedom cannot be limited solely to the problem of freedom vis-à-vis the State and in the State, for it affects the very organization of the whole of civil society and has an impact not on the citizen as such, i.e., on the public man, but on the total man as a social being." [52]

746. This is the argument from which the whole justification of the constitutional guarantee is derived. In modern times it is essential to have legal procedures designed to provide effective safeguards of the rights and freedoms accorded to the individual. In modern democratic systems the legal remedies for protection against and correction of possible violations by subjects of private law are an integral part of the systems themselves.

747. An amparo action against an individual is not a remedy designed to resolve every kind of conflict which may arise in private affairs, and it is certainly not conceived as a substitute for the jurisdiction of the ordinary courts. Sometimes a case requires further discussion or proof, and it is the ordinary courts which should assess the facts with due deliberation and balance.

748. Although in ordinary amparo actions there are no major problems in identifying the fundamental rights to be defended (the constitutional and human rights laid down in international instruments in force in Costa Rica), in the case of amparo actions brought against individuals, it is more difficult in respect of those rights which are expressly conferred by rules of law as against the authorities (for example, freedom of petition), rights whose extension to private relationships, in the character of fundamental rights, inspires serious doubt.

749. In our country legal proceedings are slow beyond the limits of logic and reason. In some cases they take more than five years. And such cases are not exceptions but rather the rule. The norm which we have transcribed stipulates that amparo proceedings are brought when "..the ordinary legal remedies are clearly insufficient or too slow to guarantee the fundamental rights and freedoms" (art. 57, Law on Constitutional Jurisdiction).

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[52] Hernandez Valle, Rubén, La tutela de los derechos fundamentales, Editoral Juricentro, San José, Costa Rica, page 107, 1990.

750. Once the action is admitted, it is communicated to the person or entity cited as author of the injury, threat or omission within a time limit of three days, using the swiftest possible written means. This time limit may be extended if it is insufficient for reasons of distance.

751. The decision admitting the amparo action declares unlawful the act or omission which gave rise to the action and orders that the rule in question should be observed, as appropriate in each case, within a time limit indicated in the decision itself; the decision also orders the responsible person or entity to make reparation for the damage caused and to pay the costs.

752. If the initial law was of a negative kind, the effect of the amparo will be to compel the person responsible to act with due respect for the right concerned. The payment of damages and costs will be made through the civil enforcement procedure.

753. If at the time the amparo is declared admissible, the effects of the act complained of have ceased, or it has taken place in such a manner that the complainant cannot be restored to the enjoyment of his rights, the award will prevent the offender from committing similar or the same acts or omissions as those which prompted the decision, and will order him to pay compensation for the damage caused and the costs of the case.

754. It must be borne in mind that the amparo action is not intended to solve problems concerning legality or legal effect. These should be discussed by other means, because the remedy would otherwise be deprived of its true character and turned into a test of legality rather than constitutionality. This is why amparo is used only to deal with the acts of some authority, official or employee which violate or threaten the rights enshrined in the Constitution (judgement of the First Chamber, 31 January 1986).

Interrogation procedures

755. As for the procedure laid down in the Costa Rican legal order for carrying out interrogations, the police authorities, when investigating the possible perpetrator of a criminal act, have been duly instructed as to the procedure to be followed. They must inform the accused person immediately, in a manner which he can understand, of a number of rights, including the right to remain silent; otherwise, if he agrees, the Public Prosecutor's office is informed and a State attorney will take the statement. The only power the police have is to interview the accused person for investigation purposes and to confirm his identity.

756. According to established practice, when an accused person is being interviewed at least three officials are present, thus avoiding misunderstanding or future suspicious situations which may arise from a meeting between the person under investigation and a single official. The presence of three officials is regarded as appropriate to ensure the judicial validity of a police procedure.

757. In exceptional cases, generally where investigations are complex, the Public Prosecutor's office seeks the assistance of officials from the Judicial Investigation Department to complete the interrogation.

Rules on detention and arrest

758. The Constitutional Chamber has stated that the right to individual freedom, as recognized and regulated by the Constitution, may not be treated in an absolute sense, but has to fit in with the public purposes of criminal proceedings, which may at times set limits on this freedom.

759. The forms of deprivation of freedom used in accordance with the legal powers exercised by the police are: detention, arrest and capture. "Arrest is the law whereby a person is deprived of his freedom through the application of a law or other means of coercion". For the Constitutional Chamber, detention is not only that which occurs in a cell or closed premises intended for that purpose ... but also any limitation or restriction on freedom which occurs outside such places." [53]

760. Detention "is the deprivation of liberty imposed on the accused in order to require him to play a part in the proceedings and make a statement when it is feared that he will not comply with a summons or will attempt to impede the investigation." [54]

761. For the detention or arrest to be lawful, they must fulfil certain requirements laid down in article 37 of the Constitution and which the Constitutional Chamber has further defined, stating that "Article 37 of the Constitution enshrines three guarantees concerning detention: a) a person may only be detained when there is at least substantiated evidence of participation in an act which constitutes an offence; b) the order must be given in writing by a judge of authority charged with the maintenance of public order, unless the person concerned is a fugitive from justice or is caught in the act; and c) within twenty-four hours of the detention, he must be placed at the disposition of a competent court" (Constitutional Chamber, decision no. 1700-92).

762. The Constitutional Chamber has determined that article 37 of the Constitution means that it is prohibited to detain a person without substantiated evidence of the commission of an offence, while defining the exceptional cases in which a citizen may be detained without complying with these requirements, namely when the detained person is a fugitive from justice or is caught in the act of committing an offence.

763. A person under suspicion is never detained; the authorities may only detain persons against whom there is substantiated evidence of an offence. This was confirmed by the Constitutional Chamber in its decision 2720-93, which states that "the detention of the applicants for amparo took place solely because they were about to commit an offence - having been found in possession of tools for breaking into vehicles - but there was no substantiated evidence, or was this a capture in the law, and therefore the detention was arbitrary and unlawful, especially as no criminal proceedings were instituted against the detained persons...".

764. Detention must be carried out in such a way as to minimise the damage to the reputation of the individuals concerned. The duty of the police officers is to act with caution at the moment of the arrest, except where the danger posed by the accused is unusually high. On one occasion, the Constitutional Chamber condemned the rash action of police officers in shooting into the air in order to frighten the suspect. In decision no. 253-93, it stated that "all members of the community are placed at risk by the firing of shots into the air in order to frighten the individuals".

765. Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duties. In decision No. 3311-93, the Constitutional Chamber admitted an application for

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[53] Constitutional Chamber, decision No. 4250-93.

[54] Duartes Delgado, Edwin, La Detención Policial, Editec Editores, San José, Costa Rica, 1998, page 12.

habeas corpus and condemned a police officer for firing at a suspect when detained, because the shooting was unnecessary.

Regulations on detention and interrogation by officers of the Municipal Police

766. The Handbook of the Training and Study Centre for the municipal police of San José states on page 4 that when "a suspect submits peacefully, he must not be physically attacked. Police officers act within a legal structure which defines the extent of force to be used, and if excessive force (more than is needed) is used, the police officer is open to civil or indeed to criminal proceedings; however, fear of being accused must not influence a police officer to the point of endangering his safety."

767. The Handbook also recommends the warning shots should not be fired in order to detain a person who is fleeing or in order to control an arrest. It states that "weapons are for the defence and protection of the lives of citizens and of oneself. Everyone must bear in mind that their use is justified only in cases of extreme necessity. That being so, care must be taken to ensure that the first shot fired is a blank, otherwise one is putting oneself in danger." [55]

768. There are three main kinds of inspection carried out by police officers. Frisking is a rapid inspection of a suspected person in order to find weapons large enough to be detected through the clothing. This is regarded as a typical security method. The second type of inspection is a search of the suspect on the ground; this consists of putting one's hands into the suspected person's clothing to locate objects which can be used as weapons or may have evidentiary value; and the third kind of inspection is carried out on an unclothed person, involving a careful examination of the prisoner and his clothes, which are taken off in order to examine them and the bodily orifices.

769. The latter kind of search, which is generally used in cases of narcotic drugs if it is suspected that small quantities are hidden on the body or in the seams of the clothes, may in some cases require the assistance of a doctor if the bodily orifices have to be examined carefully.

770. In the case of women, the ordinary rule is that they are searched by women police officers and only when there are good reasons for it. The Training Handbook of the Municipal Police states that "it is necessary to satisfy oneself that this is indisputably necessary". [56]

Regulations for detention and interrogation by officials of the Judicial Investigation Department

771. As regards the regulations governing the powers of officials of the Judicial Investigation Department in arresting indicted persons and in the treatment of detainees, section V of the Handbook of Criminal Investigation Procedures states as follows: "Recommendations on the arrest of indicted persons. Legal basis: In accordance with our legal order, nobody may be detained without substantiated evidence of having committed an offence, or by the written order of a judge, except in the case of an escape and on the order of a competent authority or

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[55] Curso Básico Policial, Centro de Formación y Estudios, Municipal Police Department, San José, page 80.

[56] Municipality of San José, La Detención, Training and Study Centre for the Municipal Police, page 33.

a prison?; but in every case the detained person must be brought before a competent court within 24 hours."

772. Section VI of the Handbook states, as regards the treatment of detainees: "The following basic recommendations apply to arrested or detained persons; or where the subject is under police control and is to be transferred from the place of detention to another place.

773. "The recommended manner of manacling a detained person is to place the hands together behind the back in such a way that the palms face outwards and the backs of the hands are together. The safety device for the handcuffs should be applied to prevent the handcuffs being closed more tightly than necessary.

774. "When a number of detainees are being dealt with and have to be handcuffed in order to move them, the technique to be used is, for instance, to place the right hand of one together with the left hand of another, which makes it difficult to move them. Help should be requested from colleagues, both for the detention and for the transfer, to avoid unforeseen situations.

775. "In order to transport detainees the vehicles in regular daily use may be used, which in some cases have security devices placed around in the internal part of the lock of the rear doors, so that the door can only be opened from the outside. In the case of a number of detainees, it is recommended to request a special vehicle from the Prison and Transport Section, in accordance with the Transport Law and the requirements of the National Insurance Agency, and to ensure that neither criminal nor civil responsibility is incurred in the event of an accident."

776. When a detained person is being transported or guarded in the open or is to be transported on foot, the Handbook recommends handcuffing the person at the back, passing the handcuffs through the belt, if possible, and holding him by the arm at elbow height, to prevent him running away.

777. In doing this, it is recommended to take special care with the regulation firearm, where it is used in a place difficult of access, since carelessness can have fatal consequences. If an arrest or capture is taking place, the instructions are that one of the officers is required to carry out a search in order to detect weapons and handcuff the prisoner or prisoners, while the other stands guard over the operation to ensure they are not taken by surprise.

778. To avoid being surprised, it is recommended that the detainee should always travel with two officers; he must travel handcuffed with the hands behind his back in the back seat of the vehicle, opposite the driver so that he cannot attack him.

779. Everyone who is detained by officers of the Judicial Investigation Department is transferred to the cells immediately after detention, unless this is impossible; the procedure is as indicated above, and should take place immediately, or at least within the six hours following the order of the Public Prosecutor's Office. In the case of regional and subregional police stations, where it is necessary to use cells belonging to another agency (Civil Guard, Rural Police, etc.), the Chief or Deputy Chief requests this service in writing, stating the particulars of the detained person, the offences committed and that he is being handed over only for the purpose of custody.

780. If there are no handcuffs, other means may be used to immobilize the prisoner, such as a bandage, a belt, a police baton, etc. The use of handcuffs or another method of immobilizing the hands does not mean causing damage, as unjustified injury must be avoided.

781. In all cases, the information known about the detainee or detainees must be borne in mind, as regards his manner of acting or the danger he presents, in which cases there is a greater duty to law expeditiously. The Handbook tells the official that he must distrust at all times what he hears from a detainee, in terms of either information or suggestions, "Remember that your life is very valuable and that a mistake or slip can cost your life."

782. One of the rights of due process safeguarded by article 39 of the Constitution is the right of a detained person to talk to his lawyer. On this point, according to decision No. 669-93 of the Constitutional Chamber, "article 39 of the Constitution enshrines the right of every person to due process and in the case of criminal proceedings, this must be respected not only the those responsible for the administration of justice, but also by all police forces, whether engaged in prevention or in punishment. Within the rights enshrined in this guarantee is the right of defence, which includes, inter alia, the right of a convicted person to be assisted by a defence counsel familiar with all the stages of the procedure, which also involves the unrestricted right to communicate in private with one's defending counsel and subject only to minimum restrictions when such communication can interfere with the discovery of the truth. In the present case the Chamber finds that the defendants, by not allowing the defence lawyer for BQA to communicate with him, while he was in detention, violated the constitutional guarantee enshrined in article 39 idem, since they were bound to allow him to communicate with his defence lawyer while in detention, especially if at that time there was no jurisdictional authority to restrict such communication, so that the present application must be declared admissible."

783. In the case of detentions and arrests for misdemeanours and contraventions, although article 235 of the Code of Criminal Procedure provides that the police may arrest persons found committing an offence or a contravention, the constitutional case law has established that according to the wording of the Constitution, the statement in article 37 that "no one may be detained without substantiated evidence of having committed an offence", the intention of the drafters was that this should be taken literally, so that contraventions would be excluded. This constitutional interpretation has compelled the police to alter their manner of handing contraventions, since an abuse of their treatment of these was open to challenge.

784. Costa Rican case law has also established that "if the alleged law is a contravention, the person responsible may only be apprehended for the period of time which is absolutely necessary for the intervention of the Mayor who has to deal with the case, and if that official is not available, only for the time needed to obtain the personal particulars of the arrested person for later submission, when the judicial official is present ... If the arrest relates to a person who is undermining public order owing to a transitory personal state, for example, the taking of alcohol, it may not be protracted, after the personal change has disappeared, longer than the time essential to bring him before the judicial authority, or the time needed to identify and charge him so that he can be brought before that authority if he was not available at the time." [57]

785. In 1992 the Costa Rican Human Rights Commission (CODEH) had stated in its regular report in connection with the treatment of contraventions that "it takes place in cases of administrative detention based on the commission of contraventions, since it began as a very widespread and persistent practice, and was eventually included as an important element in

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[57] Constitutional Chamber, decision 1700-92 of 24 June 1992.

the annual reports of the Ministries of Public Security and Governance and Police which are sent? To the Legislative Assembly." [58]

786. Without committing abuses, there are some situations which cause grave harm to law and order. One regrettable manifestation is to attack the honour and decorum of a public official in an open and flamboyant manner, when the official is only carrying out his or her public duty in accordance with the law, making an official report, allowing someone to bring his function into disrepute or insult him, for instance by spitting on him. On many occasions, real laws of contempt have been judged as contraventions, and this is unfair to a police officer who, as a representative of the law, is entitled to have his office respected. ??????

787. In this context, the Constitutional Chamber has admitted that although there is no detention for contraventions, there is arrest. In its decision No. 2007-92, the Chamber stated: "The Chamber holds that the brief deprivation of liberty suffered by the complainant in the police station of the Rural Guard of Escazú, in order to request his personal identity document and verify the authenticity of his identification as a member of the Judicial Investigation Department, it is neither disproportionate nor arbitrary as has been claimed, since it is evident that the police action took place because of the public disorder in which the complainant was involved, which is borne out by the charge laid against him the following day at the same police station by the officers concerned. Since the impugned conduct does not, in the Chamber's opinion, constitute any breach of the complainant's fundamental rights, the complaint must be declared inadmissible."

Channels and remedies open to those deprived of liberty in order to protect their rights

788. As well as the judicial remedies which are fully explained in their theoretical and jurisprudential framework, those deprived of liberty may have recourse to the Office of the Ombudsman, the executory courts? Or the Inter-American Commission on Human Rights. They may also complain to the various internal bodies within the ambit of the Directorate of Social Adaptation, to which reference has already been made.

789. In this respect, it should be added that Decree No. 22198-J, which introduces the Organic Operational Regulation of the Directorate of Social Adaptation, defines in its article 100 and subsequent articles the procedures which exist to appeal against final decisions of the collegiate bodies which exist in the various penal establishments in the country. These administrative remedies are used primarily for matters relating to the technical valuations? of prisoners.

790. As regards the procedure followed for lodging administrative appeals with the Controller of Services at the Ministry of Justice, these are received directly by staff at the Ministry, whose recommendations are passed to the senior official who makes the final decision.

791. Where complaints fall within the remit of the Legal Department of the Ministry of Justice and Pardons, the Director General of Social Adaptation, as the head of that body, has to initiate the investigation, whether it concerns a misdemeanour or a complaint.

Prison inspections

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[58] Duartes Delgado, Edwin, La detención policial, Editec Editores, San José, Costa Rica, 1998, page 30.

792. As for inspection of prisons centres by independent bodies, the judicial authority has a dual function. The executory judge, according to article 458 b) of the Code of Criminal Procedure, must visit centres within his jurisdiction at least once every six months, in order to ascertain that the fundamental rights and prison rights of persons deprived of their freedom are being respected, and may order corrective measures.

793. In the case of convicted minors, article 141 of the Law on Juvenile Justice states that "the director of the Centre must provide quarterly reports on the situation of the convicted individual". In turn, the Executory Judge must "ensure that the rights of the minor are not infringed during a sentence, especially where the minor is interned." Unfortunately, according to the authorities of the Juvenile Training Centre, a visit from the Judge is exceptional. [59]

794. There is nothing to prevent human rights organizations from making visits to the prisons in the Costa Rican penitentiary system. Likewise, officials of the Ombudsman's Office make visits in the light of the complaints which they are handling, and also carry out regular investigations ex officio on the situation of prisoners in the country, as they are entitled to do by article 12, paragraph 1, of the Law on the Office of the Ombudsman.

Training and education in the prison system

795. As regards the training and education programmes which are offered in the Costa Rican penitentiary system, these have been fully discussed in the foregoing section. To supplement what has already been said, we will outline the programme provided at the Good Shepherd Women's Centre, which is supported by other governmental and non-governmental institutions.

796. The non-governmental organizations working at this Centre assist with the technical care, fostering personal growth among the inmates by carrying out projects of an educational nature or projects offering spiritual support, training and self-help for the problems of drug addiction.

797. Each group presents its work project, which is approved by the Technical Board. There is also an association bringing together all the voluntary groups, called the Christian Association for Aid to Prisoners (ACAPLI). The management of the Centre holds monthly meeting with the members of this association to evaluate the various activities and keep them informed about the institutional policies, rules and regulations in force.

798. The civil society non-governmental organizations working in the prison system are the following: Prisoner Renewal; the Redeemed of Sion; the Baptist Church; Meeting with Friends; the P.A.S. Community; the World Missionary Movement; Servants of the Good Shepherd; the VIDA Foundation; ILPES; the Samaritans of Love; Reflection Seminars; Restoration of Love; Prayer and Life Workshops; Addicts Anonymous and Alcoholics Anonymous.

799. The higher education programme, already mentioned in general terms, is a project backed up by an agreement between the National Distance University (UNED) and the Ministry of Justice. This institution provides an opportunity for study to all who have completed their secondary education. Among its main contributions is the provision of a study grant which exempts the student from the payment of fees and supplies course material

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[59] Interview with Ada Luz Mora, Director, Juvenile Penitentiary System, 7 January 2000.

according to the chosen course. According to figures for 1 June 1999, nine students are following the UNED programme.

800. The Open Education Programme (for adults), equivalent to formal education, is a programme developed in the context of the agreement signed by the Ministry of Public Education and the Ministry of Justice. In this case, the agreement offers a broad and flexible curriculum which is relevant to the needs of the users. Among the programmes are literacy courses, attended by 19 students, basic general education divided into the Cindea I and Cindea II programmes (both in modular form), each attended by 16 students, the third distance cycle (ICER) with 26 students, the school-leaving certificate with 14 students, and the secondary course, with 24 students (figures for 1 June 1999).

801. The Non-formal Education Programme consists of a series of courses provided for the population and offering a wide curricular range, necessarily involving strict requirements unless attendance is merely for interest's sake. It includes activities such as craft workshops, coordinated by the NGO "Meeting with Friends", an English conversation class with voluntary teachers; manual activities with voluntary groups, and workshops for the arts such as guitar, theatre and folk dancing.

802. The Training Programme is endorsed by the agreement between the National Apprenticeship Institute, the Ministry of Public Education and the Ministry of Justice. Its aims are to "develop formative activities geared to detainees in the various penitentiary centres" and to provide training and technical and methodological advice to the staff in the centres.

803. The activities so far developed include the planning and holding of courses in computing, sewing, basic basketwork, macramé, international cookery, total quality control and silk screen printing. Approximately 75% of the prison population have benefited from these courses, and this means that when they leave prison they are able to join the labour market, mainly in the areas of computing and dressmaking, or to continue their formal studies.

804. According to the figures kept by the educational department at the Good Shepherd Centre, as of 1 June 1999, there are 42 students attending the craft workshops, 40 in the manual workshops, 19 in the English class and 25 in the art classes.

805. According to a report from the Ombudsman's Office, published in 1996, "One of the significant complaints within the female prison population is that the activities for which they are trained are kinds of work which they can only perform during the time they are in prison, but once they leave, it is difficult because of their economic situation it is difficult to carry them out as a means of subsistence. The problem with training of this kind is the allocation of budget funds by the Directorate of Social Adaptation, since by comparison with the male population their numbers are very small, so that funds for these training programmes are not a priority." [60]

806. During the tenure of the present office-holder in the Ministry of Justice, an agreement was signed on 5 October 1998 between the Babyliss Company S.A. of Costa Rica and the Directorate of Social Adaptation, to facilitate training and labour recruitment for an industrial production project, connected with parts and devices for electrical equipment and other associated tasks. Twenty women are engaged on this project, and the number may increase.

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[60] Ombudsman's Office, "Cuestionario sobre prisiones y condiciones carcelarias en Costa Rica", March 1996, page 13.

An agreement has also been signed with the duty-free shops at the Liberia and Juan Santamaría airports, in order to place the handicraft products produced on a self-managed basis by women prisoners.

807. The figures on work placement from the Good Shepherd Centre show that there are 59 women working in general services, 78 in self-managed activities, 100 in the private enterprise side of institutional projects and 25 on training. As for courses, up to 7 May 1999 there were 14 women training to make sports clothing and 12 to use sewing machines, both through agreements with the National Apprenticeship Institute. There are also 34 women prisoners engaged in environmental clean-up tasks without remuneration, and 3 in general services with remuneration. Of a total of 403 women prisoners, 300 (74%) are working.

Article 12

Institutions for ensuring respect for human rights

808. The Costa Rican legal system has a range of bodies to monitor respect for human rights, especially those derived from conduct of the police organs, both preventive and punitive. The Constitutional Chamber has stated that "detention is not only what occurs in a cell or closed centre designed for the purpose .. but all and any limitation or restriction on freedom which occurs outside such premises." [61]

In the prison system

809. As repeatedly explained, there are outside control organs such as the Constitutional Chamber to receive habeas corpus and amparo appeals, the executory or review judge, the Ombudsman's Office and the Inter-American Commission on Human Rights. A monitoring role is also played by the non-governmental organizations, which may enter prisons when a complaint is received, or simply in order to see how it is being operated and whether the human rights of prisoners are being fully respected.

810. They can also have recourse to internal bodies within the Ministry of Justice, such as the Controller of Services (set up by Decree No. 26965-J, published in Gaceta No. 98 of 22 May 1998) or the Legal Department, via the Administrative Procedures Section, which will then undertake the appropriate investigations and order sanctions in cases where there has been a complaint of ill-treatment or abuse of a prisoner by an official.

811. The Legal Department of the Ministry of Justice has recommended eight days suspension without pay for security agents found guilty of beating a prisoner. However, the punishment actually imposed was two days suspension without pay, as the Directorate of Social Adaptation accepted only part of the recommendation from the Legal Department, taking account of the "the employment history of each of the security agents." [62]

812. The 1996 report of the Office of the Ombudsman records the case of a prisoner who was assaulted, apparently by the security agents of the La Reforma Centre. The prisoner had apparently been beaten and was placed in the maximum security cells without being given the medical attention required. The prison director responded to the facts by alleging that force had been used in a rational manner in order to restore order. The Ombudsman's Office stated that the prisoner had been disturbed by the news that he was to move to a different

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[61] Constitutional Chamber, decision 4250-93.

[62] Office of the Ombudsman, annual report, 1996.

wing, and had created considerable disorder. Nevertheless, the prison staff had not been sparing in the use of force and had acted abusively.

Against acts by the security forces

813. The police must be governed by principles of respect for the human person, for the victim, for the person charged with an offence and for the public with which it deals, as these people are also members of the community and interact with each other. When making an arrest a police officer must be fully identified, must acknowledge the right of the person detained to be informed of the charges against him, to have a lawyer to defend him, to make a telephone call and to keep silent.

814. These rights respond to the requirements of due process. The Constitutional Chamber has stated that it is the duty of the authorities "to avoid arrest as far as possible, for which reason the necessary means at their disposal must be made available to citizens in order to adduce facts which may avert actual arrest." [63]

815. Accordingly, as explained in the foregoing article, the authorities may only arrest persons where there is substantiated evidence of the commission of an offence and with the order of a court, except in cases where the convicted person is escaping or is caught in flagrante. The arrest must be made in the manner which least damages the person's reputation, except in cases where, because the offender is a dangerous individual, it is necessary to resort to a measured use of force.

816. Administrative arrest is one of the forms of deprivation of liberty which are most frequently challenged, where it is not founded on a matter of criminal law, as the statistics show. "Without seeking to minimize the problem, Costa Rica has a low incidence, i.e., genuine complaints are rare." [64]

817. Decision No. 755-91 of the Constitutional Chamber explained that "it is generally in police custody that most arbitrary acts occur, sometimes through ignorance and sometimes deliberately. The definition of the term "arbitrary" is key, and has caused some controversy. It must not be confused with illegal or unjust. To be arbitrary, arrest or detention must be ordered without legal grounds or contrary to the law, or again, in implementation of a law which is itself unjust or incompatible with human dignity or with the right to liberty and security of the person. A case might arise in which the authority in charge detains an individual in the belief that he is committing an offence, whereas the facts subsequently show that there was no offence. Cases of flagrante delicto are not very common, and the offender tends to be arrested long afterwards, during the investigation, at a time when the scope for error increases. In this regard, the Constitutional Chamber has ruled that it is not for police officers to categorize offences, this being the responsibility of the judicial officers."

818. Costa Rican law provides for various fora in which to lay complaints of laws of abuse of authority, the most direct channels being the Public Prosecutor's office and the Judicial Investigation Department, which have offices throughout the country. The Office of the Ombudsman also receives complaints of abuse of authority, which are channelled through the competent bodies.

819. According to the statistics kept by the Miscellaneous Offences Unit of the Public Prosecutor's Office, the following complaints of abuse of authority were filed in the past two

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[63] Decision No. 94-92 of 17 January 1992.

[64] Duartes Delgado, Edwin, op. cit., page 9.

years: in the first quarter of 1998, 151 complaints, of which 18 were rejected for lack of competence; in the second quarter of 1998, 105 complaints, of which 17 were rejected for lack of competence; in the third quarter of 1998, 59 complaints were handled, of which 15 were rejected for lack of competence; in the first quarter of 1999, 74 complaints were made and 2 rejected for lack of competence; in the second quarter of 1999, 62 complaints were made and 18 rejected for lack of competence; in the third quarter of 1999, 73 complaints were made, 21 being rejected for lack of competence; in the fourth quarter of 1999, 91 complaints were made, 4 of which were rejected for lack of competence; and in the first quarter of 2000, as of 21 February, 61 cases had been submitted and 7 rejected for lack of competence.

820. In 1998, the Judicial Investigation Department dealt with 303 cases of alleged abuse of authority, distributed geographically as follows: San José 218, Alajuela 3, Cartago 6, Heredia 9, Liberia 5, Puntarenas 3, Limón 3, Pérez Zeledón 5, San Carlos 2, Ciudad Neilly 6, Pococí 9, San Ramón 4, Turrialba 5, La Unión 4, Nicoya 2, Cañas 5, Aguirre 1, Siquirres 2, Puriscal 4, Grecia 2 and Garabito 5.

821. Complaints about deprivation of liberty submitted to the Public Prosecutor's office were as follows: first quarter of 1998, 44; second quarter of 1998, 11; third quarter of 1998, 23; first quarter of 1999, 20; second quarter of 1999, 36; third quarter of 1999, 33; fourth quarter of 1999, 33; and first quarter of 2000, 16. Here it should be made clear that not all complaints about deprivation of liberty are against the police.

Procedure for investigating allegations of torture

822. As already explained, the authorities responsible for investigating possible acts of torture are the Public Prosecutor's Office and the Judicial Police, in accordance with the Organic Law of the Judicial Investigation Department (Law No. 5524 of 7 May 1974), the Code of Criminal Procedure and other special legislation.

823. Complaints of abuse of authority are investigated by the Miscellaneous Offences Unit of the Criminal Investigation Department, in the case of San José, and by the local offices and sub-offices and regional offices, in cases occurring in the rest of the country. When a complaint is received, it is assigned to an investigator or a pair of investigators to carry out all the technical procedures warranted by the case, such as visual inspection, interviews of witnesses, verification of all the data recorded in various documents, analyzing evidence, sending the victim for medical assessment by the Forensic Medicine Clinic of the Department of Legal Medicine, reviewing medical reports, requesting analyses from the Department of Forensic Laboratories, and any other procedures which are thought relevant.

824. These procedures are carried out in coordination with the appropriate district office of the Public Prosecutor, which is legally bound to direct the investigations. Once all the investigatory procedures deemed relevant have been completed, a general report is drawn up listing all the investigatory activities which have been performed and the evidence gathered for the purposes of the law, in accordance with the provisions of the Code of Criminal Procedure and other specific legislation.

Article 13

825. In Costa Rica there are no plans to set up an independent human rights commission, but there is a range of legal institutions and mechanisms to monitor and report on abuses of human rights. The ideal, in a legal system such as Costa Rica's, is for people to find

sufficient safeguards in it and for justice to be swift and satisfactory. In this regard, article 41 of the Constitution states that "Everyone shall receive reparation for injuries or damage to their persons, property, or moral interests through recourse to the laws. Justice must be prompt, thorough, without denial, and in strict accordance with the laws".

826. As already explained, the constitution provides for the remedies of amparo or habeas corpus as maximum legal instruments to restore the individual to the enjoyment of all his rights. Other fora for this purpose are the Office of the Ombudsman, the judges of the criminal courts, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Within the remit of the Ministry of Justice, there are several fora available, such as the Comptroller of Services or the Legal Department. Within the remit of the Ministry of Public Security and the Judicial Investigation Department, there is the Office of Internal Affairs and the Comptroller of Services.

Law governing the work of the Office of the Ombudsman

827. The Office of the Ombudsman, which has already been mentioned, was established through Law No. 7319, adopted in November 1992, originally called the "Law for the Protection of Inhabitants" [Ley del Defensor de los Habitantes], subsequently called the "Law for the Protection of Inhabitants of the Republic" [Ley de la Defensoría de los Habitantes de la República], supplemented by Decree No. 22.266, which establishes the "regulation for the office of the Ombudsman". [65]

828. The scope of its competence is governed by article 12 of the Law, which states, "Without prejudice to the constitutional and legal powers of the jurisdictional organs of the judiciary, the Office of the Ombudsman may, either of its own motion or at the request of a party, initiate any enquiry to elucidate matters in the public sector. However, it may not intervene in any way concerning decisions of the Supreme Court of Elections on electoral matters."

829. The intervention of the Office of the Ombudsman does not replace the acts, material proceedings or omissions of the administrative authority in the public sector, its powers being effectively to ensure their legality. The Office is competent to protect human and civil rights, to channel popular complaints about the public sector and to protect community interests in matters relating to it (article 14 of the Law).

830. In its supervisory role, the Office does not act only at the request of a party, i.e., when a complaint is lodged. It also has power to carry out studies on the spot in a particular area, and in that role has made studies of the prison system in Costa Rica. An example of these studies is the final recommendation of the Ombudsman on complaints of abuse by prison guards against visitors in 1995. The complaints refer to a search of the genital organs and degrading treatment by some staff in the prisons.

831. In a subsequent report, the Office stated concerning the search procedure during visits that "this argument cannot be advanced to justify degrading treatment, since the constitutional guarantee enshrined in article 40 of the Constitution safeguards respect for an essential area which may not be transgressed by the law or by the laws of officials, even if the purposes or intentions involved are in themselves lawful. The use of the term "no one" in article 40 of the Constitution does not reflect a mere linguistic caprice, but a clear intention

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[65] Ley de la Defensoría de los Habitantes, Government Press, published in "La Gaceta" No. 155 of 17 August 1994.

on the part of the lawmakers to guarantee respect for human dignity. This therefore protects all individuals, whatever the situation in which they find themselves." [66]

832. Other omissions pointed out by the Ombudsman's Office in its 1995 report concern searches of minors. Some of the complaints made indicated that the search procedure, in both its simple and intensive forms, was also used on boys and girls visiting prisons. According to the report, "the treatment received during the search is illegal and degrading and moreover, as minors - many of them do not possess the necessary discernment to accept or refuse the search - are victims of abuse on the part of officials who, instead of offending their dignity, ought to be offering special protection to boys and girls making a prison visit, in accordance with the requirements of the United Nations Convention on the Rights of the Child."

833. **All these observations by the Office of the Ombudsman are now past history, since with the promulgation of the visiting regime, only general searches are made and it is absolutely forbidden to require people to undress.** If this, exceptionally, occurs the person concerned may complain to the prison directors or to the Comptroller of Services. If the prison authorities believe that a person may be bringing in something which may be dangerous to an inmate, the established procedure is to call the Judicial Investigation Department (Technical Judicial Police) to detain the person and investigate.

Protection for visitors in the prison system

834. In this context, Decree No. 25882-J, published in the official gazette La Gaceta No. 57 of 21 March 1997, introduces the Regulation for Persons and Inspection of Property in the Costa Rican Prison System". This regulation, in article 5, prohibits any institutional practice signifying discriminatory treatment of detainees, visitors and the prison staff. It also contains an obligation to disseminate the regulations for the search procedures and property inspections in the visiting areas, and the duty to wear a form of identification as a staff member engaged in searches.

835. In addition, Article 6 specifies which search procedures may be used, the order of use being non-binding: observation or review, frisking, taking off outer clothing and loosening the clothing. The observation procedure consists of looking closely at the person, his clothing and any articles carried; frisking implies careful feeling of the person's body, except for the genital area. The loosening of clothing is conceived as a supplement to frisking, but does not require the person to expose private parts or be naked, and the removal of clothing will take place when the prison staff request it, but without nudity or exposing private parts. This category includes shoes, socks, stockings, caps and hats, belts, hairbands, hair clips and ribbons, collars, earrings, handkerchiefs, jackets, coats, cardigans and sweatshirts. In the three latter procedures, the visitor may ask for two witnesses to attend.

836. As indicated, the regulation specifies a procedure for cases of well-founded suspicion. Article 12 states that if these exist, the person will be ordered to bring out the prohibited objects or substances and hand them to the prison staff. If he refuses, the situation will be reported to the Judicial Police, the Public Prosecutor's office or a competent judge.

837. The regulation also provides that in the case of minors, the only permitted procedure is observation. If the removal of outer clothing is required, this will be done in the presence of

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[66] Office of the Ombudsman, Recomendación final - problema de registro corporal. 1 December 1995.

the adult accompanying the child, unless a situation as defined in article 12 arises, in which case the provisions of article 33 of the Convention on the Rights of the Child must be followed.

Legislative Commissions

838. The Legislative Assembly of Costa Rica has not set up special working groups to examine the prison system; however, through the Commission on Legal Affairs it has applied itself to the study of norms compliant with the new currents in penal policy worldwide. Law No. 7594, published in issue No. 31 of Gaceta No. 106 of 4 June 1996, effected promulgation of the Code of Criminal Procedure, which introduced modern mechanisms to adapt and remodel the criminal process, by setting up a proper conflict-solving system which will not interfere with the application of criminal justice.

839. The idea of promulgating a new Code of Criminal Procedure was not new. Since the promulgation of the previous Code of Criminal Procedures (Law No. 5789) in 1975, it had become obvious that this instrument had serious structural and procedural shortcomings which would subsequently influence its application in practice, and that it lacked a proper understanding of the criminal process as an instrument for the resolution of conflict.

840. Among the innovative aspects of the new Code of Criminal Procedure is the provision in article 25 which provides for a suspension of the evidentiary process in cases where a conditional sentence is to be awarded; this concession, mentioned above, must be requested by the indicted person, whenever he is admitting the offence and is undertaking to make compensation for the damage done. As practice is showing, this avoids the irrational and illogical expenditure of resources, and gives work a new place in the system.

841. The Code of Criminal Procedure also modifies the functions of the Public Prosecutor's office, specifying in article 62 that investigation in all offences is exclusively a matter for that office. During the so-called preparatory phase, the Office, as the prosecuting agency, gathers all the relevant evidence to arrive at the truth. During this investigation, jurisdictional control lies with the judge for the preparatory phase, especially in gathering evidence of a definitive or irreducible kind, such as that which compromises fundamental rights, for example judicial searches or telephone tapping, or those involving cautionary measures such as preventive detention. The prosecutor is the only agency involved in the investigation, as the judge for the preparatory phase merely confers legality on its actions.

842. A new Criminal Code in draft form is also going through the legislative process. However, the perception in the legal world is that it will be difficult to get it adopted, because, as pointed out by one of the country's leading criminal lawyers, Dr. Francisco Castillo, "the draft does not offer much, or at least nothing which is not already in the existing Code or which cannot be achieved through amending it. If what we want is to reform the penal system, we don't need a new code". [67]

843. Protection is afforded not only by the Constitution, which is the core of the democratic system, but also by the ratification of numerous international instruments, a large body of domestic rules, and the operation of a number of institutions and agencies, both official and unofficial, which guarantee full respect for human dignity.

The Public Prosecutor

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[67] Castillo, Francisco, "El proyecto de Código Penal", La República, April 1999.

844. Within this multiplicity of instruments which interact in the legal order, articles 62 to 67 of the Code of Criminal Procedure governs the office of the Public Prosecutor, which is responsible for criminal proceedings and for taking the measures which are relevant and useful for determining the existence of an offence. In exercising its functions, the Office subjects its conduct to critical scrutiny and also monitors effective compliance with the guarantees enshrined in the Constitution, in international law and in the law of the country. The Office investigates not only the circumstances which would enable the accusation to be proved, but also those which serve to exempt the accused person from responsibility.

845. The Code stipulates that public criminal proceedings are to be instituted only by the Public Prosecutor's office. When action is not taken by the Procurator General, the Public Prosecutor's office may take action to prosecute offences which undermine national security, law and order, the public authorities, constitutional order, the environment, the land and maritime territory and public housing. Article 17 of the Code also provides that the Public Prosecutor's office institutes proceedings for offences of a public nature which are open to private prosecution, if the victim is over the age of 15 or, if under that age, his or her legal representatives, tutors or guardians make the complaint.

846. The Office of the Public Prosecutor may take action directly when the offence has been committed against a person without legal capacity or a minor without representation, or when it has been committed by one of his relatives up to the third degree of affinity or consanguinity, his legal representative or guardian.

847. Within this scheme of functions and roles assigned by legislation, article 65 of the Code of Criminal Procedure provides for legal cooperation and assistance, for which purpose it specifies that "when the offences are carried out, in whole or in part, outside the national territory or are attributed to persons linked to a organization of a regional or international character, in cases where Costa Rican criminal law falls to be applied, the Office of the Public Prosecutor may former joint investigation teams with foreign or international institutions."

848. Article 68 of the Code of Criminal Procedure states that the Office of the Public Prosecutor shall direct the police when it has to assist in the work of investigation. In that regard, the article specifies that the officials and agents of the judicial police must always comply with the order of the Public Prosecutor's office and those given to them by the courts while the procedure is ongoing.

Article 14

The right to restitution and compensation

849. The right to restitution or compensation is fully guaranteed in the Constitution. Article 41 states that "Everyone shall receive reparation for injuries or damage to their persons, property, or moral interests through recourse to the laws. Justice must be prompt, thorough, without denial, and in strict accordance with the laws."

850. For its part, the Law on Constitutional Jurisdiction states in articles 26 and 56 that where the remedies of habeas corpus and amparo are accepted, the victim will be restored to the full enjoyment of his right or liberty, and the authorities responsible will be ordered to make compensation to him for the damage caused, to be discharged through the

administrative contentious procedure, according to the procedure laid down in the Law Governing Administrative Contentious Procedures.

851. The judgements of the Constitutional Chamber accepting these remedies are clear on this point. For example, the amparo case No. 1055-V-96 by Mr FOC against the La Reforma Centre, for the unreasonable use of force, was accepted in every particular, and the State was ordered to pay damages. To render this right effective, the victim must submit a request for enforcement of the award, based on the successful appeal, and the judge will fix the sum to be paid by the State on the basis of an initial estimate. Once the judgement is final, the Government must discharge the sum fixed, with interest if appropriate. Non-performance of the judgement by a government official will be punished by imprisonment of one to five years.

The right of aliens to restitution

852. The right of compensation as defined in the Constitution draws no distinction between nationals and foreigners. Article 33 states that "All persons are equal before the law and no discrimination may be made against human dignity." Article 19 also provides that "Foreigners have the same individual and social rights and duties as Costa Ricans, with exceptions and limitations as this Constitution and the laws establish."

853. Aliens prosecuted for committing an offence enjoy all the procedural guarantees afforded by the Costa Rican criminal justice system. This means that if they cannot pay, they will be given a defence lawyer at public expense; they may submit appeals for a judgement to be annulled or set aside, and generally speaking, they have all the safeguards to ensure the due process guaranteed in article 39 of the Constitution. This means that if an application for amparo or habeas corpus is accepted, they have the same rights as nationals to seeks economic reparation, regardless of their immigration status, since the primary concern is to protect human dignity.

854. According to recent reports by the Office of the Ombudsman, some prisoners of other nationalities have been complaining of a refusal by the National Institute of Criminology to grant them a certain benefit available to foreigners, because of their lack of family connections and because of the nature of the offence (mostly breaches of the Law on Psychotropic Substances, a few being sexual offences). Subsequently, the Institute of Criminology adopted a more open policy towards the granting of benefits. Since 1996, no complaints have been recorded by the Ombudsman's office concerning discrimination on grounds of nationality.

The procedure for claiming reparation

855. The procedure for requesting payment of damages is laid down in the Law Governing Administrative Contentious Jurisdiction, in articles 76 to 81. The text states that once the judgement is final, the Court will order or provide, at the request of a party, the measures necessary to ensure its due and prompt execution.

856. Article 77 states that the verdict against the administration is the payment of a sum of money, it must be granted and verified immediately, if funds are available. If this necessitates a reform of the national budget, a time limit of three months is granted to initiate

the process. Once the award or decision defining the sum of money is final, according to article 78, the court must also, at the request of a party, communicate the finding to the Budget Office and the Controller General of the Republic. When three months have elapsed from receipt of the communication, these offices must not pass or adopt any ordinary or extraordinary budget from an Administration subject to a payment obligation, if they do not make provision for the allotment necessary to discharge the award. The form of payment by the State must be that which is the least onerous for the public purse.

857. In order to render the legal provisions effective, article 81 of the text provides that non-compliance will incur criminal and civil responsibility and, except where more stringent rules apply, non-execution of judgements will be punished by imprisonment of one to five years. Moreover, the guilty officials may not enjoy the benefits of provisional liberty, a suspended penalty, conditional liberty or a pardon, nor may they exercise any public office for five years following the discharge of the penalty.

Rehabilitation programmes

858. In Costa Rica there is no special programme to rehabilitate victims of torture. When a person is physically injured by actions of the police, he is treated in hospital.

859. In this context, decision No. 4903 of the Constitutional Chamber, upholding the application for habeas corpus by Mr HRM against the security supervisor of the closed area of the La Reforma prison, was based on the fact that an excessive use of force on the part of the staff, contrary to article 40 of the Constitution, transgressed the rules and values in the matter. The judgement stated that "the inmate was transferred following the incident to the Mexico Hospital, where he was kept as an in-patient, and this is sufficient to show that in fact the prison staff did exceed the limit and inflict the unnecessary ill-treatment complained of .. By reason of the foregoing, the application is admitted."

860. The powers conferred by the Constitution and by law do not set any limits to what a court may decide, the outcome being guided by principles of law such as equity, proportionality and justice. This means that there is no limit to a pecuniary award against the State; the same applies, as appropriate, to medical and psychological rehabilitation in any of the country's health centres.

The "Find your voice" project

861. The project "Find your voice" in Costa Rica is intended to equip ex-prisoners with training for employment and education. The project, devised by the Latin American Institute for Prevention and Health Education (ILPES), works in a context of preventing re-offending. The project was devised in the framework of the document "Justice goes forward", ratified by the Presidents of Central America as a response to the need to innovate in the prison system.

862. This project, which now has on board 13 persons, has been confirmed as the only Centre for Guidance and Support in the region for ex-detainees and ex-prisoners who have re-offended in property offences and are seeking to change their lives and not offend. The project operates through the cooperation of the Mixed Social Assistance Institute (IMAS), which provides a monthly subsidy of 40,000 colones ($129,50 dollars) for training, and gives grants for micro-businesses; the National Apprenticeship Institute (INA) which provides technical training and employment agencies; the Ministry of Justice, which gives logistical support in the process of selecting candidates; the Institute of Latin American Studies

(IDELA), which gives support in the form of talks on popular culture; private universities, through skilled voluntary staff; and the Embassy of the Netherlands and civil society, through volunteer assistance and donations.

863. The project has been in operation for four years and has catered for 90 former prisoners, and through them, about 250 individuals in their families, who have received financial support, medical and psychological care and training for employment, among other things. Of all these participants, only 5% have re-offended, and this has happened when, for various reasons, they have left the group process, which indicates that re-offending diminishes if there are favourable conditions of support and guidance.

864. The work is organized in three stages: the selection of candidates; guidance and psycho-social support; training for employment; and formation of micro-businesses and re-insertion into the labour market. The process of selection includes a sounding in the prisons of the metropolitan area among prisoners close to completing their sentences, to ascertain those who are interested in taking part in the project. At this stage, group and individual psychological support is offered as a preparation for leaving, including workshops such as "Preparing to leave" and "Seeing you out". These workshops are presently held in the La Reforma and Good Shepherd centres. They begin with an induction course of four to eight sessions with inmates who, according to a list supplied by the Directorate of Social Adaptation, are close to returning to freedom.

865. The guidance and psycho-social support stage is introduced because, when they leave the prison, those interested may take part on a voluntary basis in daily meetings providing therapeutic support for half the day, during which the following topics are handled: addiction and alcoholism, violence, individual psychological treatment, literacy, social skills, family support, computing and popular culture, among others. Relatives are invited to these meetings, in order to take part in the process of building a life without crime. During the afternoon, each participant attends a vocational training centre run by INA, in order to learn a trade which will enable him or her to survive without the need for crime, as well as receiving small business advice.

866. The third stage is called "setting up micro-businesses" through re-entry into the labour market. For this purpose, the Centre has a rotating credit fund provided by IMAS, which finances ex-prisoners in buying the necessary equipment and materials to set up their own businesses, for which purpose it is compulsory to have passed the course in business management set by INA. The Centre holds technical training courses in leatherworking, shoe repairing, handicrafts, dressmaking, hairdressing and make-up, cabinetmaking, metalwork and repair of domestic electrical appliances; the project also has access to the INA's employment agencies. The project has a follow-up system for those who have left prison, to monitor how they are using their time; there is also interaction between those who have left recently and those who already have experience of life on the outside.

867. The project is now in a consolidation phase and is looking for more financial support in order to expand its activities to the juvenile prison population, through programmes such as creches for children and family reintegration.

Article 15

Rules for the admission of evidence

868. Article 40 of the Constitution provides that any statement obtained by violence will be null and void. In this sense, any evidence brought to a court which has been obtained through violent methods will be without legal validity, and criminal proceedings may be taken against the person who obtained the evidence by these means.

869. In making this provision, the Constitution also guarantees the provision in article 39 on due process. In turn, article 234 of the Code of Criminal Procedure provides that "As well as the means of proof contemplated in this Code, other means may be used, provided they do not suppress the freedoms and faculties of the person concerned nor undermine the institutional system. The manner in which they are included in the procedure must be adapted to the method of proof most similar to those defined."

870. Article 82 of the Code refers to the rights of the accused, stating that "The judicial police, the Office of the Public Prosecutor and the judiciary, as appropriate, must inform the accused forthwith in a form which he can understand that he has the following rights: f) not to be subjected to techniques or methods which exert pressure on him or affect his free will, or undermine his dignity."

871. These principles are also ratified by article 96 of the Code of Criminal Procedure, which states: "In no circumstances shall the accused be required to give an oath or a promise to speak the truth, nor shall he be subjected to any form of coercion or threat, nor shall any means be used to oblige, induce or cause him to make a statement against his will, nor shall charges or counterclaims be laid against him for the purpose of obtaining a confession. Measures which threaten the freedom of decision of the accused, his memory or the capacity to comprehend and direct his actions are prohibited, especially ill-treatment, threats, exhaustion, physical violence, torture, or the administration of mood-altering drugs and hypnosis. The promise of an advantage is only permissible when specifically provided for by law .."

872. The guarantees of due process establish that "the police may not take a statement from the accused. If he indicates that he wishes to make a statement, the fact must be communicated to the Office of the Public Prosecutor so that the statement may be taken with the formalities provided by law. He may be interviewed only for the purpose of investigation and in order to establish his identity when this is not sufficiently clear." This point is perhaps among the most sensitive, and proceedings are regularly thrown out because police officers have committed a procedural error by taking the statement.

873. The handbook "Basic Course in Policing" of the San José police advises police officers that when interrogating someone, "you must explain to him his right to be assisted by a defence lawyer and not to incriminate himself." The interrogation may be carried out when there is evidence against the person being interrogated, in the presence of a competent authority and when there is a charge against him. The police may not take a statement, according to article 98 of the Code of Criminal Procedure." [68]

874. Article 99 of the Code of Criminal Procedure provides, concerning the appraisal of evidence, that non-compliance with these rules will prevent the statement of the accused from being used against him, even if he has consented to the procedure. This guarantees that due process complies with all the formal requirements and that when evidence is weighed, the judge can decide according to law.

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[68] Curso Básico Policial, Centro de Formación y Estudios, Departamento Policía Municipal, San José, page 1.

875. It is important to make the reservation that the legal system provides for a series of examinations which may be carried out on the body of accused in order to ascertain the truth. In this respect, article 88 of the Code of Criminal Procedure defines the kinds of examination which may be made: " taking samples of blood and skin, nail and hair cuttings, photographs and fingerprints, voice recordings, recording tattoos and deformations, variations or defects, palpation of the body and in general, acts which do not harm physical health or integrity, according to ordinary experience and the rules of medical knowledge..".

876. The Code of Criminal Procedure also establishes as a general principle of defective process, according to article 175, the prohibition against basing a judicial decision on laws performed contrary to the Constitution, international or Community law in force in Costa Rica and the Code, unless the defect has been cured in accordance with the rules governing the correction of judicial acts.

877. Moreover, article 181 on the legality of evidence states: "Evidence will be of value only if it has been obtained by lawful means and is incorporated into the procedure according to the provisions of this Code. Unless it favours the accused, information obtained through torture, ill-treatment, coercion, threats, deceit, undue entry into the privacy of the home, correspondence, communications, private documents and archives, or information obtained by other means which sap the will or violate the fundamental rights of individuals, may not be used."

878. As for the treatment given particularly to the criminal responsibility of minors, article 54 of the Law on Juvenile Justice states with regard to evidence that "In these proceedings all the evidence specified in the Code of Criminal Procedure shall be admissible, to the extent that it does not affect the aims and rights enshrined in this law. Evidence shall be appraised according to the rules of common sense"

879. Concerning statements made by a minor, article 81 states that "Minors may refrain from making a statement. In no circumstances may they be required to promise or swear to tell the truth, nor may coercion or threats be used against them, nor may any means be used to compel them to make a statement against their will, nor may charges be laid in order to obtain a confession from them. Failure to comply with this provision will render the act null and void."

880. New evidence-gathering practices have been introduced into the juvenile justice system, in line with the notion of acting in the best interests of the child. Exceptionally within the criminal justice system, a statement by a minor is taken only by the Procurator for Minors of the Public Prosecutor's office. In addition, to avoid having to repeat statements, with the emotional damage this can cause, a minor will make his or her statement in one session only, before the judges, doctors, prosecutors and lawyers. This hearing is held in chambers without formality, all being seated at the same level to avoid intimidating the minor.

881. Evidence which is admitted to prove the existence of an unlawful law and its perpetrators is the same as in adult criminal proceedings, implying that the principles of legality and lawfulness of proof must be adhered to, and the evidence must be appraised by the judges on the basis of common sense.

882. The Costa Rican justice system does not make exceptions for anyone who commits an unlawful act, so any authority which resorts to methods other than those provided in law in order to obtain evidence will be responsible for its acts and will be prosecuted. An example of such a situation is the recent sentence of one and a half year's imprisonment handed down

by the district court of Pérez Zeledón, in the southern part of the country, against members of the police who were found guilty of the offence of abuse of authority in carrying out a police investigation.

883. According to a report in the local newspaper La República, the four police officers came to a farm to question a farmworker about the loss of some tools. Although the man said he did not know what they were talking about, he was put into a police car and driven to his house. Once he was in the house, they told his wife to hand over the tools, but as she did not know either what they were talking about, they left, taking the farmworker with them. On the road, they stopped the car and one of the police officers took out his regulation firearm and fired it off close to his ear. The sentence included a ban on holding public office.

Article 16

Freedom of conscience in the prison system

884. Article 75 of the Constitution of Costa Rica states that "The Apostolic Roman Catholic Religion is that of the State, which contributes to its maintenance, without impeding the free exercise in the Republic of other worship that is not opposed to universal morality or good customs." The wording of the Constitution is clear in upholding freedom of religion, even though the official State religion is Catholicism.

885. The Costa Rican prison system permits the free practice of religion, including visits not only by Catholic priests but also by pastors from other Christian churches and other religions, if required. The report of the Office of the Ombudsman for 1995 reflects this situation, stating that "religious beliefs are respected, and this is evident from the permission given to organized groups of various creeds to maintain contact with prisoners, subject to a timetable fixed in advance." [69]

886. Another important aspect to note in the report of the Ombudsman for that year is that the Costa Rican prison system does not differentiate on grounds of race, sex, language, religion, political or other opinions of a national or social kind, wealth, birth or other circumstance.

The situation of migrants

887. To expand on the concept found in article 1 of the Convention, the State of Costa Rica considers it appropriate to give some information about the situation of Nicaraguan immigrants.

888. In April 1999 Jorge E. Taiana, the Executive Secretary of the Inter-American Commission on Human Rights, was given a full report on the situation of migrants in Costa Rica and of Costa Rican migrants abroad. Additionally, in accordance with United Nations General Assembly resolution 52/97, in June 1999 the Secretariat of the Organization was given a report on "violence against women migrant workers", and the national report on resolution 54/166, entitled "Protection of migrants", was recently submitted to the Office of the High Commissioner for Human Rights. These documents are annexed.

889. The Central American political context in the 1980s, and the serious economic crisis in Nicaragua in particular during the present decade, has resulted in a massive and continuing

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[69] Office of the Ombudsman, Cuestionario sobre pensiones y condiciones carcelarias en Costa Rica, 1996, page 19.

flow of Nicaraguan immigrants, crossing the frontier illegally in search of better economic prospects. This situation has compelled the authorities to adopt extraordinary measures in virtually every area (health, education, housing, work and social security, to list a few examples).

890. According to the General Directorate for Migration and Aliens of Costa Rica, until 1987 the most significant migratory flow consisted of Salvadorians. However, that year saw the start of a massive flow of Nicaraguans, the numbers of whom are now the subject of considerable speculation, with some sources giving a figure of 500,000 to 700,000, though without adequate empirical evidence. The only exact figure is for the number of legal residents registered with the General Directorate for Migration and Aliens as of 13 June 2000 - 127,148 people. Other major migratory flows are accounted for by Salvadorians, who total 8,866 in Costa Rica, and Guatemalans, at 8,056.

891. The total number of foreigners in the country is 32,322 with temporary residence permits, and 208,358 with permanent residence permits, making a total of 240,680. The statistics from the General Directorate for Migration and Aliens do not break down the figures by sex and age, because the figures are not kept in this form.

892. As a consequence of the serious damage caused by Hurricane Mitch in November 1998, the Government of Costa Rica, in Decree No. 27457-G-RE, published in the official gazette La Gaceta on 9 December 1998, promulgated an amnesty for migrants for six months, lasting from 1 February 1999 to 31 July 1999, for all illegal Central American immigrants who had been living in Costa Rica before 9 November 1998.

893. With this initiative, Costa Rica has provided an opportunity for many Central Americans to regularize their migration status, avoiding deportation and a consequent deterioration in the socio-economic situation in those countries. It has also acquired closer control over the foreign migrant population, which will now have to contribute to the pension, health and employment insurance schemes, like any Costa Rican worker.

894. When the amnesty period for immigrants was over, the number of aliens recognized was 155,316 (figure for 17 March 2000). Of this total, 131,998 requests were accepted and 8,701 refused.

895. The exact number of Nicaraguans in the country is not known with any accuracy and it is hoped that it can be ascertained through the national census carried out in June 2000.

896. As regards compliance with the obligations of the Covenant, there is no Government policy of persecution or ill-treatment of Nicaraguan citizens, nor is there a xenophobic attitude on the part of the Costa Rican people, as some foreign organizations have claimed; on the contrary, the attitude of recent administrations, in view of the difficult economic situation of a neighbouring country combined with natural disasters, has been to collaborate, both through humanitarian assistance and by promulgating a range of regulatory measures to enable them to settle in Costa Rica and exercise all the rights and obligations enshrined in the Constitution and in law.

897. According to the statistics kept by the Office of the Ombudsman, from 1996 to date 36 complaints emanating from the migrant population have been handled. The most frequent complaints and opinions are: violation of personal integrity and freedom of movement, manifested in the abuse of authority in detention in cases of mass deportations and expulsions, denial of the right to exercise administrative and judicial remedies in order to

claim legal residence in the country, and prolonged stays in detention centres, for up to three days, before being deported.

898. As a consequence of the last amnesty for migrants, there has been an intensive campaign to publicize the rights of foreigners in Costa Rica. It is important to note that according to article 19 of the Constitution and article 64 of the General Law on Migration and Aliens, "Aliens have the same rights as nationals"; and therefore, according to the legal provisions and the general principles of law, "no-one may claim ignorance of the law", which derives from the legal certainty which is necessary in a legal system.

899. In order to avoid irregular situations which denigrate the human condition, and taking advantage of genuine necessity, the Migration Office has stepped up its inspection procedures and has carried out other measures such as sending to the field personnel from San José with considerable experience in this field. These officials, as well as collaborating in the expulsion of foreigners who have entered the country illegally, help to discover false or altered identity documents, such as residence permits, certificates of handover of amnesty documents or other receipt of documents provided by the Office in San José or a regional office, and carry out inspection procedures in relation to their other colleagues and police officers.

900. The established mechanism is the rotation of officials, in order to ensure that they do not form contacts with persons and organizations associated with illicit acts against foreigners. Regular reports are also sought from regional chiefs and, if possible, from other significant police units, which makes it possible to establish interlinked control and makes it easier to detect anomalous situations.

901. Other activities which have taken shape in studying the problems of migrants are the Migrant Forums, convened by the Special Protection Unit of the Ombudsman's office and attended by Government entities, international agencies within the United Nations system, the Inter-American Institute of Human Rights and non-governmental organizations involved in this area.

902. In the defence of migrants rights, as well as the High-Level Commission on Migration, consisting of ministerial representatives form the principal ministries in the field, there are agencies such as the Office of the Ombudsman, the Regional Office of ACNUR, the Directorate General for Refugees and NGOs such as the Central American Human Rights Commission (CODEHUCA), the Costa Rican Human Rights Commission (CODEHU), Caritas of Costa Rica and the International Consultants bureau (C.A).

Gender violence

903. The other aspect which this Government regards as important concerning the definition of torture and cruel and inhuman treatment in a broader sense is violence against women. This approach, linking the violation of human rights with violence in general, and especially gender violence, is a very recent position in international fora.

904. There is no universally accepted definition of what should be understood by gender violence. Elizabeth Odio, the serving Vice-President of Costa Rica and an international expert in human rights, defines it as "action by one person against another with the intention of causing harm, inflicting physical or moral suffering, or both, i.e., this is an intentional human action which causes damage and pain to another human being, and on this basis it is clear that it is avoidable. When the act is directed against a women, because she is a woman,

or when the acts affect women disproportionately, then we are talking about gender violence."[70] In 1994, the United Nations appointed a Special Rapporteur on violence against women, who developed a broad concept of what is meant by violence, covering the following acts: physical, sexual or psychological violence occurring in the family, including ill-treatment, sexual abuse of boys or girls in the home, dowry-related violence, rape by the husband, female genital mutilation and other harmful traditional practices affecting women, acts of violence perpetrated by other members of the family and violence related to exploitation. These acts of domestic violence actually constitute torture and cruel, inhuman and degrading treatment of women.

905. In this connection, it is important to note that last May, Costa Rica submitted to the Organization of American States the first biannual report on compliance with resolution AG/RES-1456 (XXVII-O/97), "Promotion of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 'Convention of Belém Do Pará'". The report describes in detail the executive action taken to prevent and punish violence against women, the legal measures adopted and the case law on the subject.

Report prepared by ASO/
Department of Human Rights
Sub-Directorate for Multilateral Policy
General Directorate of Foreign Policy

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[70] Odio Benito, Elizabeth, "Protección de los Derechos Humanos de las Mujeres". International Protection of Women's Human Rights, IIDH?, CLADEM. Workshop on systems of international protection of women's human rights (22-26 July 1996, San José, Costa Rica), 1997, page 26.

In compiling this report, the final version was prepared in consultation with the following institutions:

Supreme Court of Justice
Constitutional Chamber
Judicial Investigation Department
Office of the Public Prosecutor
Ministry of Public Security
General Directorate for Migration and Aliens
Municipality of San José
Municipality of Belén
Municipality of Alajuela
Municipality of Montes de Oca
Municipality of Tres Ríos
Ministry of Justice
General Directorate of Social Adaptation
Office of the Ombudsman
National Psychiatric Hospital Manuel Antonio Chapui
National Psychiatric Hospital Chacón Paut
National Indigenous Affairs Commission (CONAI)
Latin American Institute for Prevention and Health Education (ILPES)
United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD)
University of Costa Rica - Faculty of Law
Free University of Costa Rica
University College of Cartago
State Distance Learning University

The procedure was as follows:

The institutions associated with the subject matter were sent a detailed questionnaire about the most relevant points to be included in the information about each article of the Convention.

The information was processed and supplemented with other information obtained through on-the-spot studies, interviews and consultations with the main university and academic research bodies.

When the report was ready in its original version, it was sent to the main institutions for their comments, which were then incorporated into the final text.